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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHERE: Duke University,
Von Cannon Hall, Bryan Center,
Durham, NC.
RESERVATIONS: 919–684–3030.

SALT LAKE CITY, UT

WHEN: March 29, at 9:00 a.m.
WHERE: State Office Building Auditorium,
Capitol Hill,
Salt Lake City, UT.
RESERVATIONS: Call the Utah Department of
Administrative Services, 801–538–3010.

WASHINGTON, DC

WHEN: March 29, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 918

[Docket No. AO-162-A6; AMS-FV-88-039]

Fresh Peaches Grown in Georgia; Order Amending the Marketing Agreement and Order; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This action corrects the final rule amending the Georgia peach marketing agreement and order by removing duplicate amendatory instructions and provisions relating to the addition of a new paragraph (d) to § 918.81 Termination.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC, 20090-6456; telephone: (202) 475-3919.

SUPPLEMENTARY INFORMATION: In **Federal Register** document 90-903 beginning on page 1379 of the Tuesday, January 16, 1990, issue of the **Federal Register**, the following corrections are necessary to remove erroneous wording:

1. On page 1382, in the first column, amendatory instruction 11 and paragraph (d) of § 918.81 which follows are removed.

2. Amendatory instruction 12 is renumbered as 11.

Dated: February 23, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-4619 Filed 2-28-90; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Part 97

[Docket No. 90-020]

Fee Increase for Overtime Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: In a document published in the **Federal Register** on January 31, 1990 (55 FR 3197-3198, Docket No. 90-005), we amended the regulations that establish charges for Sunday, holiday, or overtime work performed by inspectors of the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture at laboratories, border ports, sea ports, and airports. The regulations were amended to: (1) Increase the hourly rates charged a person, firm or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to certain inspection, laboratory testing, certification, or quarantine and who requires the services of an APHIS employee on a Sunday or holiday or at any other time outside the employee's regular tour of duty; and (2) increase the hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service.

In the third sentence of the paragraph explaining the effective date, which begins on page 3197, column 3, the word "signature" should read "publication." The sentence correctly reads "In order to allow for orderly implementation and maximum recovery of costs, the rule will be effective the bginning of the first pay period following publication." The date which appeared in the "**EFFECTIVE DATE:**" line, February 11, 1990, is correct.

FOR FURTHER INFORMATION CONTACT: Paul R. Eggert, Director, Resource Management Support, PPQ, APHIS, USDA, Room 621, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7764; or Louise Rakestraw Lothery, Director, Resource Management Support Staff, VS, APHIS, USDA, Room 740, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436-7517.

Done in Washington, DC, this 23rd day of February 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-4620 Filed 2-28-90; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 86-037F]

Ingredients That May Be Designated as Natural Flavors, Natural Flavorings, Flavors or Flavorings When Used In Meat or Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to better define and limit the substances which are permitted to be designated only as "spice," "natural flavor," "natural flavoring," "flavor" or "flavoring" in the list of ingredients on labels for meat and poultry products. The final rule addresses the use of substances which are often added to product for purposes such as flavor enhancers, emulsifiers, stabilizers, binders, extenders and as nutrient sources, but are currently only identified as natural flavor, natural flavoring, flavor or flavoring. Most of the substances that will be affected by the final rule are proteinaceous (substances containing protein or nitrogen) materials having nutritional value and which may be considered foods in their own right. The final rule requires that, when used in meat and poultry products, these substances must be identified separately in the list of ingredients on many product labels by their standard, common or usual names, thereby informing consumers of the origin of these substances. In addition, those substances which are of livestock or poultry origin must include the species and animal tissues from which they are derived unless otherwise exempted. The final rule addresses the personal, cultural, and religious concerns of consumers, as well as the allergies or

sensitivities some consumers may have to some of the substances.

EFFECTIVE DATE: August 28, 1990.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; Area Code (202) 447–6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule is not a "major rule" within the scope of E.O. 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule requires that, when used in meat and poultry products, certain substances that are now identified as spices or flavorings must be identified separately in the list of ingredients on product labels. This will require the revision of the list of ingredients on many product labels. When the proposal was published in August, 1987, FSIS stated that "While there may be some costs involved in label changes, these costs would be minimized by providing adequate time to use existing label inventories and to include required changes in normal redesigning or repurchasing of labels." Because some comments addressed the issue of labeling revision costs, FSIS conducted some additional studies to provide more detailed information on estimated costs.

As a first step, FSIS asked a group of experienced inspectors to provide an estimate of the average life of an approved label. Out of a group of 20 inspectors, 16 agreed that 2 years was a best estimate. Using this estimate and the data showing 114,000 new labels approved in 1988, FSIS estimates that there are approximately 230,000 labels in use.

Two thousand labels approved during June, 1989, were examined to provide the estimates described in the following analysis. The 2,000 labels were first divided into the categories of cooked sausage labels and "other" labels. When the rule was proposed, FSIS knew that the products affected the most would be cooked sausages with limits on added water. These are the products for which there is an economic incentive to add nonmeat proteinaceous materials of plant, yeast, or dairy origin. The review of 2,000 labels found that 13.75 percent were labels for cooked sausage. Thus, there are an estimated 32,000 approved labels for cooked sausages in use (230,000 x 0.1375 = 31,625). These products are produced in over 2,500 establishments. Although it is frequently impossible to determine the exact composition of flavors by examining label approval records, the review led to an estimate that possibly 25,000 of the 32,000 cooked sausage labels would be affected. Of the estimated 198,000 labels for other meat and poultry products, it is estimated that approximately 20,000 would be affected. For these products, the leading cause for change is the new requirement that Hydrolyzed Vegetable Protein (HVP) be identified separately in the list of ingredients. The analysis of 2,000 labels has, therefore led to an estimate that approximately 45,000 labels would be affected.

The cost of producing a revised label can vary widely depending on the number of colors involved, the need for graphic redesign, the portion of the label that requires modification and the printing process used. The least costly revision is a change in a single color of text, the type of revision that will be required to comply with this rule. The cost of revising the single-colored text on a label has been estimated to range from $125 to $150 per label.

If 25,000 cooked sausage labels had to be revised at $150 per label, the total cost would be $3.75 million for 2,500 establishments, or an average of $1,500 per establishment. The 20,000 other labels would cost another $3 million. This would be spread over a larger number of establishments including many or most of the cooked sausage producers.

There are at least two factors that should have a considerable affect in reducing these estimates of potential costs. First, FSIS is providing a period of 180 days after publication before the rule becomes effective. This action reduces the impact in two ways. It allows time to use existing label inventories and provides the opportunity to include the required label revisions with any ongoing plans to revise or redesign labels. When the required changes can be included with a planned revision, the incremental costs associated with this rule are essentially zero. Using the average label life estimate of 2 years, FSIS would expect that 25 percent of the 45,000 labels would be revised within 180 days. This would reduce the cost estimate from $6.75 million to approximately $5 million.

The second factor is that establishments may choose to eliminate an ingredient rather than identify it separately on the product label. Removing an ingredient now identified as a flavoring will not lead to a label revision if the order of predominance of the remaining flavorings is not affected. FSIS believes this will be the case for a substantial number of products.

While the revision of existing labels is viewed as the primary impact of this rule, there are other potential impacts. The rule may also increase the total number of approved labels for the affected products. Today, one label may be sufficient for multiple product formulations because various ingredients are lumped together and identified collectively as "flavorings." Establishments can vary formulations and use the same label as long as the order of predominance of the total "flavoring" combination does not change.

FSIS recognizes that certain establishments have benefitted because of the policy to allow certain proteinaceous substances to be identified as flavorings. However, there was also a cost associated with the flexibility to change formulations under a single label. FSIS considers it important that consumers be able to determine, through reading the ingredients statement, when product composition is changed. The flexibility to change spices or true flavorings, without label change, is not affected by this rule.

Effect on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Although a substantial number of small entities will be affected, the economic impact will not be significant for most small entities.

As discussed above, over 2,500 establishments have labels approved for the production of cooked sausages with limits on added water. The majority of these processors would be viewed as small businesses under any reasonable definition of "small business." This rule will affect most of these establishments as they will have to revise the ingredient listing on the label of meat and poultry products affected. The rule will also affect some producers that only produce "other" products. However, based on the Executive Order 12291 discussion above, the Administrator has concluded

that these impacts will not be significant for a substantial number of small entities.

Background

Many meat and poultry products contain proteinaceous (substances containing protein or nitrogen) ingredients obtained from a variety of sources in addition to meat, meat byproducts, mechanically separated (species), or poultry. These proteinaceous ingredients may be of plant, yeast, dairy, egg or fish origin. These ingredients may fulfill many functions, the most significant of which are cost reduction, binding, extending and flavor enhancing. In the last decade, there has been a marked increase in the use of proteinaceous ingredients in meat and poultry products to replace, in part, the meat, meat byproduct or poultry ingredients in these products.

FSIS's labeling regulations require that all ingredients be listed on labels of products fabricated from two or more ingredients by their common or usual names (9 CFR 317.2(c)(2) and 317.2(f)(1), and 381.118 (a) and (c)) unless otherwise exempt. The terms "natural flavor," "natural flavoring," "flavor" or "flavoring" may be used to designate natural spices, essential oils, oleoresins, and other natural spice extractives (9 CFR 317.2(f)(1)(i) and 381.118(c)). FSIS has permitted these terms to include powdered onion, powdered garlic and powdered celery which are added for flavoring purposes and which do not provide a significant nutritional contribution.

In recent years, FSIS granted an exception to the common or usual name rule to proteinaceous materials, including products of livestock, poultry, egg, milk, plant or yeast origin, permitting them to be designated as natural flavor, natural flavoring, flavor or flavoring in meat and poultry products under the incorrent assumption that they were being used for flavoring purposes only and did not provide a significant nutritional contribution.

More recently, however, the levels at which proteinaceous materials are used in products have increased as manufacturers of these substances have promoted them expressly for their nutritional and other functional values, especially as low cost meat replacements. Due to concerns about the perceived improper label designation of these ingredients, FSIS published a proposed rule in the **Federal Register** (52 FR 30922) on August 18, 1987, to amend the Federal meat and poultry products inspection regulations to better define and limit the substances which are permitted to be designated as spice, natural flavor, natural flavoring, flavor or flavoring on packages of meat and poultry products.

Most of the proteinaceous substances addressed in the proposed rule are not defined as natural flavor or natural flavoring under Food and Drug Administration (FDA) regulations (21 CFR 101.22). FDA ingredient labeling regulations explicitly state that the name of an ingredient shall be a specific name, not a collective or generic name (21 CFR 101.4(b)). Specific exemptions are listed, including exemptions for spices, natural flavors and natural flavorings (21 CFR 101.4(b)(1)). The term "spice" is defined as "any aromatic vegetable substance in the whole, broken, or ground form, except for those substances which have been traditionally regarded as foods, such as onions, garlic and celery; whose significant function in food is seasoning rather than nutritional; that is true to name; and from which no portion of any volatile oil or other flavoring principle has been removed * * *." (21 CFR 101.22(a)(2)).

The term "natural flavor" or "natural flavoring" is defined as "the essential oil, oleoresin, essence or extractive, protein hydrolysate, distillate, or any product of roasting, heating, or enzymolysis, which contains the flavoring constituents derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, seafood, poultry, eggs, dairy products, or fermentation products thereof, whose significant function in food is flavoring rather than nutritional * * *." (21 CFR 101.22(a)(3)).

FSIS has become concerned that the policy of allowing proteinaceous substances or ingredients to be declared as natural flavor, natural flavoring, flavor or flavoring has resulted in the terms being inappropriately used to list ingredients that should be identified by their common or usual name because their functions include more than flavoring.

When these ingredients are designated as natural flavor, natural flavoring, flavor or flavoring, there is no method by which consumers can determine the presence of specific components. Many people may want to avoid certain ingredients, for health reasons or because of religious or cultural preferences, but cannot do so unless those ingredients are listed on the product label by their common or usual names.

FSIS's paramount concern is public health. Many individuals suffer allergic reactions from eating certain proteinaceous substances. When such ingredients are designated on meat or poultry product labels only as natural flavor, natural flavoring, flavor or flavoring, consumers who are sensitive ingest these ingredients without knowledge of their presence, discovering their presence only after suffering an allergic response. For example, FSIS has received several letters from persons afflicted with celiac sprue disease which prevents them from digesting gluten-containing products. Some substances now identified on labels of meat and poultry products as natural flavor, natural flavoring, flavor or flavoring may contain gluten. Consumers are unable, in these cases, to identify and thereby avoid these substances.

FSIS is aware of and concerned about the potential severity of such allergic reactions. Label designation of these proteinaceous ingredients by their common or usual names is essential to reduce the likelihood of consumers ingesting them unknowingly.

Similarly, protein hydrolysates may contain high levels of sodium. Unless hydrolysates are designated by their common or usual names, consumers are not aware of their presence, and those on sodium restricted diets unknowingly may be consuming relatively high levels of sodium.

There are also many consumers who have cultural or religious preferences regarding meat and poultry products who are frustrated by the absence of disclosure of these ingredients. For example, when components of slaughtered animal tissues, even though they may be hydrolysates or extracts (e.g., blood components), are not specifically identified, consumers have no way of determining their presence and exercising dietary preferences.

It should be noted that other substances used mainly to flavor foods, such as salt, sugar and corn syrup (a plant material hydrolysate), are already required by regulation to be identified in the ingredient statement by their common or usual names.

In the August, 1987, proposed rule (52 FR 30922), FSIS stated its intent to amend 9 CFR Part 317 of the Federal meat inspection regulations and 9 CFR Part 381 of the poultry products inspection regulations to require that ingredients, now identified as natural flavor, natural flavoring, flavor or flavoring but also serving other functions, be listed, without exception, in the list of ingredients on meat and poultry product labels by their common or usual name. This included the species of origin and the specific tissue from

which ingredients of slaughtered animal origin are derived.

The proposed regulation specified that only natural spices, essential oils, oleoresins, and other natural spice extractives, and powered onion, powdered garlic and powdered celery may be listed as flavorings. The term "spices" would be allowed to designate only natural spices. Further, the proposed regulation specified that any other ingredients, including ingredients that contribute to flavor, must be identified by their common or usual name. When these ingredients are blends or mixtures of more than one substance or ingredient, each individual component of that mixture or blend would have to be identified by its common or usual name on the label of the product in which the blend is used as an ingredient, unless the component is a spice or flavoring as specified above.

The proposed rule (52 FR 30922) provided a comment period extending to October 19, 1987. FSIS received several requests to extend the comment period, and re-opened the comment period until December 22, 1987.

Discussion of Comments

FSIS received 80 written comments in response to the proposed rule. Multiple signature comments were treated as a single comment. Comments ranged from simple expressions of opinion to extensive commentary. Approximately 45 of the comments were submitted by employees, local sympathizers, or meat and poultry processors influenced directly by Hercules, Incorporated, a processor of yeast products. These 45 commentaries opposed the proposed rule. Of the remaining 35 comments, 22 supported the proposed rule and 13 opposed it.

Twenty-nine comments were received from individuals. Twenty-eight of those individuals were identified as Hercules, Incorporated employees or Hutchinson, MN (the location of a Hercules, Incorporated facility) residents who opposed the proposed rule. They expressed concern that a change in the regulations would result in reduced usage of yeast products which would result in job losses and increased sausage prices. Many of these commentaries also mentioned the beneficial effects to sausage due to the nutritional value of yeast products and to their binding capacity. One individual supported the proposed rule citing her allergic sensitivity to certain proteins.

Five organizations based in Hutchinson, MN opposed the proposed rule on the premise that jobs would be lost, revenues would be reduced and the cost of sausage would be increased.

Twenty meat and poultry processors submitted comments concerning the proposed rule. Fifteen opposed the proposal, five supported it. Eleven of the comments were as a form letter opposed to the proposal. These commentaries stated there would be consumer confusion as a result of the changes and that there would be inconsistencies between labeling of flavors when present in FSIS or FDA regulated products. Four of the remaining processors opposed the proposed rule, and five supported it. Opposition to the proposed rule centered on perceived differences with FDA interpretations of flavor labeling and increased cost of sausage products.

Ten suppliers or manufacturers of seasonings and "flavorings" submitted comments. Six opposed the rule, four supported the rule. Those opposing the proposal cited increased cost, consumer misunderstanding, inconsistency with FDA labeling requirements and inconsistency with labeling some plant protein products and animal protein products.

Ten trade associations commented on the proposed rule. Nine of the associations supported the rule provided the final rule is consistent with FDA labeling interpretations. One association expressed opposition to specific label identification of hydrolyzed vegetable protein when used as an ingredient in meat or poultry products.

Six comments were received from other interested parties. Three supported the proposed rule, three opposed it. The objections centered on need for identification of specific flavoring ingredients, economic impact and loss of label flexibility for use of alternate ingredients.

The major concerns of commenters are: (1) definition of what constitutes a natural flavor, natural flavoring, flavor or flavoring, and the need for consistency of labeling between FSIS and FDA regulated products; (2) the need (or lack of) for consumers to know the specific name of some ingredients now designated as natural flavor, natural flavoring, flavor or flavoring and that specific ingredient disclosure would confuse consumers; and, (3) specific label disclosure of these substances would result in increased labeling costs. Comments relating to these specific issues will be examined and evaluated on the specific issue basis.

The labeling issue perceived as a problem by 27 commenters concerned the definition of what ingredients can properly be designated as natural flavor, natural flavoring, flavor or flavoring, and the need for consistency of labeling such ingredients among FSIS and FDA regulated food products. FSIS agrees that there should be uniformity of labeling between FSIS and FDA regulated products, and the language of the rule has been modified to more closely resemble that found in FDA regulations. The language of the rule has been changed to more closely resemble that in the FDA regulations designating what is a spice and what is designated as natural flavor, natural flavoring, flavor or flavoring, except that spices and powdered onion, garlic and celery may also be designated as natural flavor, natural flavoring, flavor or flavoring. There were no objections to the provisions in the proposed rule to permit spices, powdered onion, powdered garlic and powdered celery to be designated as natural flavor, natural flavoring, flavor or flavoring. This practice has been followed for many years, and the final rule permits such labeling in the future even though this is not consistent with FDA regulations.

Sixteen commenters specifically referred to the significant nutritional benefits and other functional effects of many of the ingredients now being permitted to be declared as natural flavor, natural flavoring, flavor or flavoring on the labels of meat or poultry products. While it is true that ingredients now identified as natural flavor, natural flavoring, flavor or flavoring have significant nutritional benefits, FSIS has concluded that it is reasonable that such ingredients should be designated by their common or usual name because such a requirement is consistent with FDA requirements and will more properly inform consumers of ingredients that are present in a meat or poultry product.

Two commenters objected to the requirement that ingredients of livestock or poultry origin should be designated by names that include the species and livestock and poultry tissue from which the ingredients were derived. This labeling designation requirement is generally applicable to all slaughtered animal products processed under FSIS inspection, except certain mixed rendered animal fats (9 CFR 317.2(f)(1)(iii)) and casings, and will be applied to ingredients of livestock or poultry origin now being designated as natural flavor, natural flavoring, flavor or flavoring. FSIS believes that consumers have the right to know this information for purposes of health, religious or cultural reasons. The final rule does not permit ingredients of livestock or poultry origin to be designated as natural flavor, natural

flavoring, flavor or flavoring on the label of the product unless the ingredient's primary function is flavoring rather than nutritional.

FSIS agrees that there should be as much uniformity as possible between FSIS and FDA in the labeling of all food products. Therefore, the final rule is written in language which is intended to result in uniformity of label declaration. The exception being that the FSIS regulations will permit spices, powdered onion, powdered garlic and powdered celery to be designated as natural flavor, natural flavoring, flavor or flavoring on meat and poultry product labels. Those ingredients whose primary function in food is nutritional must be declared individually by their common or usual name. Most of the proteinaceous substances which have been commented on in this rulemaking procedure contain between 50 and 95 percent protein on a dry basis and, therefore, are considered to have significant nutritional value and do not meet the requirements of those substances which may be designated as natural flavor, natural flavoring, flavor or flavoring.

Fourteen commenters addressed the issue of whether consumers need to know the specific names of ingredients and that such information would confuse them. Several commenters proposed that when flavoring ingredients were added at low levels, e.g., in condimental quantities of less than one percent, then such ingredients should be permitted to be declared as flavorings. While it is agreed that many consumers may not fully understand what all ingredient names mean in terms of ingredient characteristics and functions, this is not a valid argument for not listing ingredients by their common or usual name as currently required by the Federal Meat Inspection Act, the Poultry Products Inspection Act, the Federal meat inspection regulations and the poultry products inspection regulations. Neither do the above-cited authorities provide for distinctions to be made in label disclosure based on quantitative determinations. Therefore, the final rule does not provide relief from specific disclosure of ingredients by their common or usual name depending on the amount present in the product.

Four commenters expressed the view that health, religious, ethnic and personal preferences concerning consumption of some of the ingredients now declared as flavorings was not a problem and consumers were not in need of specific information. Eight other commenters addressed this issue and supported the need to know for those concerned consumers. The Center for Science in the Public Interest was particularly concerned about the disclosure of the presence of hydrolyzed vegetable protein (HVP) as a flavoring because it contains monosodium glutamate (MSG). They advocated that products containing HVP identify the ingredient as "hydrolyzed vegetable protein (contains MSG)" so that concerned consumers could avoid consumption of products containing MSG. There were 479 petitions from consumers supporting this position attached to that comment. The final rule requires that HVP be declared by its common or usual name on the labels of products in which it is an ingredient. FSIS believes that the "(contains MSG)" is unnecessary as consumers who need to avoid MSG would be aware that HVP contains MSG. The requirement to disclose that HVP contains MSG would also be inconsistent with FDA requirements, as "(contains MSG)" is not required on labels of FDA regulated products containing HVP.

FSIS also believes that products labeled according to the new rule will better enable consumers to exercise their right to know the ingredients contained in meat and poultry products. This will make it easier for consumers to avoid purchase and consumption of products which may contain ingredients to which they may be allergic or which they may want to avoid for personal, ethnic or religious reasons. In addition, the requirement that ingredients which are derived from livestock and poultry tissues be identified by both species and tissue will also help consumers make informed selections for the reasons described above. This requirement does not apply to mixed animal fats or casings.

Fifteen commenters expressed concern that specific disclosure of ingredients would increase costs to processors and consumers due to labeling change requirements. FSIS recognizes that changing the ingredients statement on labels does cost money. Therefore, the effective date of this rule provides for sufficient time to use up existing labels and to coordinate ingredient declaration changes with other normal label changes that are routinely made as as to minimize the cost of compliance with this rule.

Three commenters referred to loss of flexibility in changing formulations when specific ingredient identification of ingredients, which are not spices or flavors, is required. Some of the current flexibility will be lost under this final rule. When product composition is changed, it is essential for consumers to be better able to determine when a product contains an ingredient they may wish to avoid. This determination is made by reading the ingredients statement. Flexibility to change spices or true flavors is not affected by this rule.

The concerns expressed about the cost of label changes due to the impact of the proposed rules is of concern to the FSIS. Therefore, to minimize the cost impact of the required labeling changes, the effective date of 180 days from date of publication will allow processors sufficient time to make any formulation of labeling changes they may desire without unnecessary economic hardship.

Final Rule

After careful consideration of the comments and all other available information, FSIS is amending Parts 317 and 381 of the meat and poultry products inspection regulations to more clearly identify those ingredients that may be designated as "spice," "natural flavor," "natural flavoring," "flavor" or "flavoring" in the list of ingredients on the labels of meat or poultry products as set forth below:

List of Subjects

9 CFR Part 317

Labeling, Marking devices, and Containers.

9 CFR Part 381

Labeling, and Containers.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 is revised to read as follows and the authority citations following the sections in part 317 are removed:

Authority: 21 U.S.C. 457, 601–695; CFR 2.17, 2.55.

2. Section 317.2(f)(1)(i) is revised to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(f) * * *

(1) * * *

(i) The terms spice, natural flavor, natural flavoring, flavor and flavoring may be used in the following manner:

(A) The term "spice" means any aromatic vegetable substance in the whole, broken, or ground form, with the exceptions of onions, garlic and celery,

whose primary function in food is seasoning rather than nutritional and from which no portion of any volatile oil or other flavoring principle has been removed. Spices include the spices listed in 21 CFR 182.10, and 184.

(B) The term "natural flavor," "natural flavoring," "flavor" or "flavoring" means the essential oil, oleoresin, essence or extractive, protein hydrolysate, distillate, or any product or roasting, heating or enzymolysis, which contains the flavoring constituents derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or any other edible portion of a plant, meat, seafood, poultry, eggs, dairy products, or fermentation products thereof, whose primary function in food is flavoring rather than nutritional. Natural flavors include the natural essence or extractives obtained from plants listed in 21 CFR 182.10, 182.20, 182.40, 182.50 and 184, and the substances listed in 21 CFR 172.510. The term natural flavor, natural flavoring, flavor or flavoring may also be used to designate spices, powered onion, powdered garlic, and powdered celery.

* * * * *

3. Section 317.8(b)(7) is revised to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.

* * * * *

(b) * * *

(7)(i) No ingredient shall be designated on the label as a spice, flavoring, or coloring unless it is a spice, flavoring, or coloring, as the case may be. An ingredient that is both a spice and a coloring, or both a flavoring and a coloring, shall be designated as "spice and coloring", or "flavoring and coloring", as the case may be, unless such ingredient is designated by its common or usual name.

(ii) Any ingredient not designated in § 317.2(f)(1)(i) of this part whose function is flavoring, either in whole or in part, must be designated by its common or usual name. Those ingredients which are of livestock and poultry origin must be designated by names that include the species and livestock and poultry tissues from which the ingredients are derived.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

4. The authority citation for Part 381 continues to read as follows and the authority citations following the sections in Part 318 are removed:

Authority: 7 U.S.C. 450; 21 U.S.C 451–470; 601–695; 33 U.S.C 1254; 7 CFR 2.17, 2.55.

5. Section 381.118(c) is revised to read as follows:

§ 381.118 Ingredients statement.

* * * * *

(c) The terms spice, natural flavor, natural flavoring, flavor or flavoring may be used in the following manner:

(1) The term "spice" means any aromatic vegetable substance in the whole, broken, or ground form, with the exceptions of onions, garlic and celery, whose primary function in food is seasoning rather than nutritional and from which no portion of any volatile oil or other flavoring principle has been removed. Spices include the spices listed in 21 CFR 182.10, and 184.

(2) The term "natural flavor," "natural flavoring," "flavor" or "flavoring" means the essential oil, oleoresin, essence or extractive, protein hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the flavoring constituents derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or any other edible portions of a plant, meat, seafood, poultry, eggs, dairy products, or fermentation products thereof, whose primary function in food is flavoring rather than nutritional. Natural flavors include the natural essence or extractives obtained from plants listed in 21 CFR 182.10, 182.20, 182.40, 182.50 and 184, and the substances listed in 21 CFR 172.510. The term natural flavor, natural flavoring, flavor or flavoring may also be used to designate spices, powdered onion, powdered garlic, and powdered celery.

(i) Natural flavor, natural flavoring, flavor or flavoring as described in paragraph (c)(1) and (2) of this section, which are also colors shall be designated as "natural flavor and coloring," "natural flavoring and coloring," "flavor and coloring" or "flavoring and coloring" unless designated by their common or usual name.

(ii) Any ingredient not designated in paragraph (c)(1) of this section whose function is flavoring, either in whole or in part, must be designated by its common or usual name. Those ingredients which are of livestock or poultry origin must be designated by names that include the species and livestock and poultry tissues from which the ingredients are derived.

* * * * *

Done at Washington, DC on: January 28, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 90–4640 Filed 2–28–90; 8:45 am]

BILLING CODE 3410–DM–M

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9 CFR Part 318

[Docket No. 86–038F]

RIN 0583–AA30

Determination of "Added Water" in Cooked Sausages

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations by (1) defining the kinds of proteins which will be credited as of livestock or poultry origin and those that will not be credited as of livestock or poultry origin when added water is calculated in cooked sausages, and (2) by setting forth the method by which FSIS determines the quantity of added water in cooked sausages. Added water in cooked sausages means any water not attributable to ingredients of slaughtered livestock or poultry origin, except those processed by hydrolysis, extraction, concentrating, or drying; and any water not attributable to one percent of the formula weight of the cooked sausage by ingredients of slaughtered livestock or poultry origin processed by hydrolysis, extraction, concentrating, or drying or by ingredients from any other protein-contributing source. The Federal meat inspection regulations limit the amount of added water in cooked sausages to a maximum percentage of finished product weight. The amount of added water is determined by laboratory analysis and appropriate calculations. Each one percent of protein from sources other than slaughtered livestock or poultry origin or from ingredients of slaughtered livestock or poultry origin which are processed by hydrolysis, extraction, concentrating, or drying, not subtracted from the total protein content results in the addition of 4 percent added water in cooked sausages.

Therefore, FSIS is amending the Federal meat inspection regulations to define the kinds of protein which will be credited the same as protein of slaughtered livestock or poultry origin and those that will not be credited the same as protein of slaughtered livestock

or poultry origin when added water is calculated, and to set forth the method by which the amount of added water will be determined.

EFFECTIVE DATE: August 28, 1990.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; Area Code (202) 447–6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or upon the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The final rule defines the kinds of proteins which will be credited the same as protein of slaughtered livestock or poultry origin and those that will not be credited the same as protein of slaughtered livestock or poultry origin when added water is calculated in cooked sausages and sets forth the method by which FSIS will calculate the amount of added water in cooked sausages. This final rule may require some cooked sausage processors to reformulate their product(s). These product reformulations may require some minor labeling changes. Costs to reformulate and/or to modify labels will not result in an annual effect on the economy of $100 million or more.

Effect on Small Entities

The Administrator, FSIS, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). A substantial number of small entities could be affected by this rule but not significantly so. This final rule may require some cooked sausage processors to reformulate their products and make labeling changes to reflect changes in product formulations. However, to minimize any economic impact of this rule, FSIS has modified the rule to permit the addition of ingredients not of slaughtered livestock or poultry origin or of slaughtered livestock or poultry origin which have been processed by hydrolysis, extraction, concentrating, or drying, in an amount of one percent of the product formulation. Since some of these ingredients are less expensive than slaughtered livestock or poultry ingredients, some savings may be realized. In addition, the rule will not become effective for 180 days after publication to allow affected entities ample time to reformulate products and to use up existing labels.

Background

Many meat and poultry products contain added water. The amount of added water in a product is controlled by food standard regulations (See 9 CFR part 319 and part 381, subpart P) or by label declarations (See 9 CFR part 317 and part 381, subpart N) to ensure that consumers receive products that are not adulterated with excess water in violation of the Federal Meat and Poultry Products Inspection Acts (21 U.S.C. 601(m)(8) and 453(g)(8), respectively). Products containing added water include such widely diverse groups as sausages, cured products, and seasoned fresh products. Methods of control currently employed by FSIS to ensure product compliance with regulatory requirements include formulation control, weight measurement, and laboratory analysis. Laboratory analysis of finished product is used more and more as the preferred method of measurement to ensure product compliance with standards and/or label declarations. Laboratory analysis is the only method used for determining compliance with added water limits for cooked sausages, which are the subject of this final rule.

Cooked sausages are meat food products which have existed as recognized items of commerce for generations. They are commonly known by such names as frankfurters, bologna, liverwurst, and cotto salami (See 9 CFR 319.140, 319.180–319.182). These products are mixtures of tissues of livestock or poultry origin, water, salt, seasonings, and other ingredients. Cooked sausages may be cured or smoked and may contain binders which are added for functional purposes. The amount of added water which may be present in the finished product is limited by regulation (9 CFR 319.140, 319.180–319.182). Added water may be water that is added as such or contained in certain ingredients which are not of slaughtered livestock or poultry origin. Water naturally contained in meat, meat byproducts, mechanically separated (species), or poultry product ingredients is not considered as added water but as water indigenous to livestock or poultry.

The procedure traditionally employed by FSIS to determine the amount of added water present in a product has been to: (1) calculate the protein attributable to protein ingredients of slaughtered livestock or poultry origin, (2) multiply that figure by four to get the amount of water attributable to the slaughtered livestock or poultry ingredients, and (3) subtract the water attributable to the slaughtered livestock or poultry ingredients from the total water present to get "added water." This calculation is based on the fact that slaughtered livestock or poultry ingredients have a consistent moisture to protein ratio of approximately 4:1 that is utilized for this compliance determination.

Protein content is determined by measuring the amount of nitrogen present in a sample of product and making appropriate calculations. Therefore, when nonmeat proteins or other nitrogenous substances are added to cooked sausages, they must be deducted from total analytical protein to determine the amount of slaughtered livestock or poultry protein present and to determine what proportion of the water present in the product is attributable to these slaughtered livestock or poultry ingredients. This calculation is easily accomplished if the laboratory knows the amount of nonmeat protein or other nitrogenous substances that have been added so that a deduction can be made from the total protein content of the finished product. This information is normally available to, and provided by, the inspector taking the sample at the establishment.

In recent years, proteinaceous materials identified only as "flavorings" have been utilized in increasingly large quantities as ingredients in cooked sausages and have constituted as much as 20 percent or more of the protein in some cooked sausage formulations without being deducted in the added water calculations.

FSIS was petitioned by three trade associations and one company to reassess the situation in which nonmeat proteins have been counted in determining added water in cooked sausages. These petitioners asked FSIS to deduct nonmeat proteins when determining the added water content of cooked sausages and to enforce existing regulatory standards and labeling requirements. FSIS believed that while these proteinaceous additives might serve as flavorings or flavor enhancers, they should be deducted when determining the added water content of

cooked sausages. This rule responds to the above-mentioned petitions.

FSIS had, in response to petitions requesting that nonmeat proteins be included as part of the slaughtered livestock or poultry ingredients when calculating "added water," considered the option of permitting a limited amount of nonmeat proteins and four times that amount of added water to be considered as part of the slaughtered livestock or poultry ingredients when calculating added water in cooked sausages. However, FSIS believed that any such crediting of nonmeat proteins, even a limited amount, would be inconsistent with current FSIS policy as reflected in the Protein Fat Free (PFF) regulations for cured pork products, which do not allow any nonmeat protein contribution to minimum PFF percentages (9 CFR 319.104, 319.105, 318.19 and 327.23). An attempt by FSIS to review nonmeat proteins on a substance-by-substance basis to determine whether or not the protein should be treated the same as protein of slaughtered livestock or poultry origin would be unworkable because so many ingredients are utilized to perform various functions, such as binding, emulsifying and stabilizing.

Consequently, FSIS published a proposed rule in the **Federal Register** (52 FR 30925) to establish procedures by which the "added water" content of cooked sausages would be determined. The proposed rule would ensure that cooked sausages to which nonmeat protein had been added were in compliance with prescribed regulatory standards, guaranteeing that such products would not be considered adulterated, misbranded, or otherwise not in accordance with the requirements of the Federal Meat Inspection Act. The proposed rule, which was consistent with regulations concerning the addition of nonmeat proteinaceous substances to cured pork products, addressed concerns expressed by the three trade associations and proposed to implement the principle that nonmeat protein used for any purpose should not result in the replacement of proteins of slaughtered livestock or poultry origin in cooked sausages.

FSIS proposed to determine the amount of added water in cooked sausages based solely on the amount of protein which was of slaughtered livestock or poultry origin and contributed by meat, meat byproduct, mechanically separated (species), and poultry product ingredients, except ingredients that have been processed by such means as hydrolysis, extraction, concentrating, or drying. The total protein contributed by proteins of slaughtered livestock or poultry ingredients must be known to ensure compliance with regulatory limits for added water. It was proposed that products such as partially defatted chopped (species), partially defatted (species) fatty tissues, and proteolytic enzyme treated (species) trimmings be credited as part of slaughtered livestock or poultry ingredients, because they are moderately processed ingredients which are used as a nutrient source and not for specific functional purposes, such as binding, emulsifying, stabilizing, flavoring, and similar uses (see 9 CFR 301.2(tt) and 301.2(uu); see also 9 CFR 319.5, 319.15(e), 319.180(g), and 381.1(b)(41)).

To determine the amount of protein from slaughtered livestock or poultry ingredients during added water calculations, FSIS proposed that: (1) all proteinaceous materials which are not of slaughtered livestock or poultry origin be identified as to the amount added to the product formulation, and these proteinaceous materials be deducted from total protein when calculating the amount of added water (such substances would include but would not be limited to plant products, yeast products, milk products, egg products, or their derivatives); (2) proteinaceous materials which were of slaughtered livestock or poultry origin but which are processed by such means as hydrolysis, extraction, concentrating, or drying would not be credited as part of the slaughtered livestock or poultry ingredients. The amount of protein added to the product formulation by ingredients processed by hydrolysis, extraction, concentrating, or drying would be required to be identified for deduction from total protein. (Such proteinaceous materials included, but were not limited to (species or kind) extracts, stocks and broths, hydrolyzed tissues, and tissue extracts.) These materials, while of slaughtered livestock or poultry origin, have been so extensively processed that they have lost their identity as slaughtered livestock or poultry ingredients. These materials have been added as functional ingredients, and the degree of processing used to make these ingredients is such that the natural moisture to protein ratio has been altered.

Accordingly, FSIS proposed that all nonmeat proteins be deducted from total protein present during compliance determinations of added water in cooked sausages. The proposed rule was published on August 18, 1987 (52 FR 30925), and provided for a comment period until October 19, 1987. FSIS received several requests to extend the comment period, and reopened the comment period until December 22, 1987.

Discussion of Comments

FSIS received 88 comments in response to the proposed rule. Multiple signature comments were counted as a single comment. Comments ranged from simple expressions of opinion to extensive commentary. Approximately 57 of the comments were submitted by employees, local sympathizers, or meat and poultry processors influenced directly by Hercules, Incorporated, a producer of yeast products. These 57 commenters opposed the proposed rule. Of the remaining 31 comments, 24 supported the proposed rule and 7 opposed it.

Thirty-nine comments were received from individuals. All of these individuals were identified as employees of Hercules, Incorporated, or residents of Hutchinson, MN (location of a Hercules, Incorporated, facility) and all opposed the proposed rule. They expressed concern that a change in the regulations would result in reduced usage of yeast products which could result in lost jobs and increased sausage prices.

Five organizations based in Hutchinson, MN opposed the proposed rule on the premise that jobs would be lost, revenues would be reduced, and the cost of sausage would be increased.

Twenty comments were received from meat and poultry processors. Thirteen opposed the proposed rule on the basis that it would require formulation changes and would increase product costs. The seven remaining processors generally supported the concept of limiting the amount of added water in cooked sausage. However, several suggested limiting the amount of nonmeat protein that could be added to cooked sausage formulations and/or permitting limited amounts of nonmeat proteins to be considered the same as proteins of slaughtered livestock or poultry origin when determining "added water."

Ten suppliers or manufacturers of seasonings and flavorings submitted comments. Six generally supported the proposed rule, four opposed it. The opposition centered on increased costs if more than 10 percent "added water" is not permitted in cooked sausages. Those in support of the concept wanted a limited quantity of nonmeat protein to be credited the same as protein of slaughtered livestock or poultry origin when calculating "added water."

Seven trade associations commented in support of the proposed rule. All suggested limiting the amount of nonmeat protein that could be considered the same as protein of slaughtered livestock or poultry origin or limiting the amount of nonmeat protein that could be added as ingredients in cooked sausage.

Seven comments were received from other interested parties. Three opposed the proposal and questioned the economic impact of the proposed rule. Two wanted to change the standards for cooked sausage to require a minimum protein content. Two supported the proposed rule.

The major issues addressed by the commenters were: (1) the inclusion of nonmeat protein when calculating "added water"; (2) the economic impact of limiting the amount of added water in cooked sausage to the level permitted by regulatory standards; and (3) inclusion of all processed proteins of slaughtered livestock or poultry origin when calculating "added water." These issues will be discussed individually.

Many commenters wanted to include some, or all, nonmeat proteins when determining the amount of added water in cooked sausages. Several wanted restrictions on the amount of nonmeat proteins allowed in cooked sausages, and most wanted to include a maximum amount. Three commenters wanted no restrictions on the amount of nonmeat protein which would be permitted and credited the same as protein of slaughtered livestock or poultry origin when calculating "added water."

FSIS has considered these arguments and has determined that it is appropriate to provide for a limited amount of nonmeat proteins to be credited the same as protein of slaughtered livestock or poultry origin when determining "added water." Past practice permitted the inclusion of some nonmeat proteins in calculating added water as described earlier. FSIS has concluded that a reasonable amount would be one percent of the formula weight excluding added water. It is further concluded that the one percent nonmeat protein may be contributed by any proteinaceous ingredient not of slaughtered livestock or poultry origin or any ingredient of slaughtered livestock or poultry origin which has been processed by hydrolysis, extraction, concentrating, or drying. This will include ingredients added for purposes such as binding, extending, flavor enhancement, and other functions.

Crediting one percent of nonmeat proteins the same as protein of slaughtered livestock or poultry origin will not significantly affect the nutritional character of the cooked sausages. Most cooked sausages contain approximately 11 percent protein from slaughtered livestock or poultry ingredients. The creditable one percent nonmeat protein could therefore constitute approximately nine percent of total protein to be credited in calculating added water.

Some commenters suggested that the nutritional value of the nonmeat proteins be considered when determining whether they should be credited. FSIS recognizes that the nonmeat proteins may be either superior to, or inferior to, proteins of slaughtered livestock or poultry origin, but protein quality is not an issue when determining added water. The issues associated with nutritional equivalency of different kinds of proteins are too numerous and complex to be within the scope of this rulemaking. However, FSIS will entertain petitions for a separate rulemaking on this issue.

The second major issue addressed by the comments was the economic impact. Commenters addressed the scope of the FSIS's Threshold Analysis, the estimate for current production practices, the cost of nonmeat proteins, and the impact on small businesses. The Threshold Analysis is a document prepared by FSIS to facilitate decisionmaking prior to the development of a regulatory response and includes information whereby the Administrator may determine whether Regulatory Flexibility Analysis is required under the Regulatory Flexibility Act. The Threshold Analysis as used by FSIS is not a rulemaking requirement. The comments on economic impact were directed at the analysis conducted by FSIS as part of the Threshold Analysis prepared during the development of the proposal.

Comments submitted by Hercules, Incorporated, state that USDA did not adequately take economic factors into consideration when it calculated only the cost to the regulated industry. The Department is well aware that certain types of regulations have the effect of benefitting one sector of the economy at the expense of the other. In this case, the recent increased use of nonmeat proteins has benefitted the suppliers of these substances at the expense of the producers and suppliers of livestock or poultry ingredients. The regulation, as proposed, would have reversed that trend, but the net gains and losses would have been zero. The important point is that regulatory decisions that affect the choice of ingredients should not be based on who wins and who loses, but rather on a regulatory objective that is based on the intent of the relevant statute.

FSIS believes that the proposal was consistent with the intent of the existing statutes and regulations. This final rule is also consistent with that intent and, in addition, accommodates practices that are viewed as "traditional" or have evolved over several years. In this case, production practices have evolved over a period of time as the result of a series of policy decisions on specific proteinaceous substances.

The comments by Hercules, Incorporated, also criticized the FSIS analysis for focusing on changes in production cost and not on projected changes in retail prices. FSIS is well aware that the food distribution chain frequently uses standard markups to arrive at wholesale and retail prices. Retail price increases above production cost increases are also accompanied by additional profits at the wholesale or retail level. The net effect of markups is also a transfer or shift in impact with increased costs equaling increased benefits. For this reason, FSIS focused its threshold analysis on changes in production costs.

There is a second issue related to retail price increases. The comments from Hercules, Incorporated, suggest that consumers would be unhappy about any price increase for cooked sausages. FSIS points out that it is not a simple issue of a single product with two prices. This regulation addresses analytical procedures for determining compliance by a standardized meat food product. FSIS believes that consumers expect the protein in these products to come primarily from ingredients of slaughtered livestock or poultry origin. A product with substantial amounts of proteins not of slaughtered livestock or poultry origin is a different product, and it is not clear how fully informed consumers would make their purchasing decisions.

A second area of comment on economic impact concerned the FSIS estimate on the use of nonmeat proteins in cooked sausages. In preparing the Threshold Analysis, FSIS estimated that the average cooked sausage contained approximately 0.83 percent protein from all nonmeat protein sources. Hercules, Incorporated, cited discussions with experts that indicate the average level of use is about 1.25 percent. FSIS believes that 0.83 percent is the best available estimate. Before using this estimate, FSIS examined over 1,200 different formulations. In view of the fact that the final rule allows one percent nonmeat protein to be counted the same as protein of slaughtered

livestock or poultry origin during calculations, the difference in these estimates becomes less important.

Some commenters also claimed that FSIS overestimated the cost of nonmeat proteins. While that may be correct, the nonmeat protein suppliers have not provided any detailed information on the cost of their products. However, because of the changes in the final rule, this issue also becomes less important. Using the Threshold Analysis estimates of 0.83 percent nonmeat protein content and $2.50 per pound for flavorings, FSIS calculated a production cost change of $25 million. Using the Hercules, Incorporated, estimates of 1.25 percent for nonmeat protein content and $1.50 per pound, the final rule would result in a production cost change of $11.25 million. (This estimate assumes that all producers are currently formulating for 1.25 percent nonmeat protein and would cut back to one percent.)

Comments on economic impact, including comments from the U.S. Small Business Administration, also addressed the impact on small businesses and the possible requirement to conduct a Regulatory Flexibility Analysis. In publishing the proposal, FSIS concluded that the rule may affect a substantial number of small businesses. At the time, FSIS was less certain that the impact on many small processors would not be significant. The changes in the final rule remove any uncertainty. With the allowance of one percent of protein from livestock or poultry origin processed by hydrolysis, extraction, concentrating, or drying, and/or any other protein-contributing source to be credited in the added water calculation, the impact on small businesses would not be significant.

The third major issue addressed in the comments concerned what proteins of slaughtered livestock and poultry origin should be included when calculating added water. Several commenters wanted to include all proteins of slaughtered livestock or poultry origin. Their arguments were based on historic precedence and the character of the protein. FSIS believes that proteinaceous materials which are of slaughtered livestock or poultry origin, but which have been processed by such means as hydrolysis, extraction, concentrating, or drying, have lost their character as ingredients of slaughtered livestock or poultry and should not be considered as such. These proteinaceous materials include, but are not limited to (species or kind), extract, stock and broth, hydrolyzed tissue, and tissue extract. However, as discussed above, the final rule permits these proteins (livestock or poultry origin processed by hydrolysis, extraction, concentrating or drying) to be used at a level of one percent of the formula weight, and they will be credited as slaughtered livestock or poultry origin when calculating added water.

Final Rule

Several changes have been made to the final rule in response to comments received on the proposal as discussed earlier and for clarification purposes.

First, FSIS has determined that it is appropriate to permit one percent of the formula weight of certain ingredients not considered as proteins of slaughtered livestock or poultry origin to be considered as protein when calculating added water. This means that ingredients of slaughtered livestock or poultry origin which have been processed by hydrolysis, extraction, concentrating, or drying or ingredients from any other protein-contributing source, such as plant products, dairy products, egg products, yeast products, or their derivatives will be credited as proteins at a level of one percent of the formula weight in calculating added water. This determination necessitated further revisions to the rule as discussed below.

Second, as a result of the determination made above, it was necessary to develop and define two categories of proteins. In the proposal, these categories were referred to as meat and nonmeat proteins. With the addition of the one percent allowance, it was necessary to more clearly differentiate between the kinds of proteins that would and would not be credited when calculating added water. The first category is designated "Group 1 protein-contributing ingredients," and this category covers all ingredients of slaughtered livestock or poultry origin from muscle tissue which is skeletal or which is found in the edible organs, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separate from it in the process of dressing; meat byproducts; poultry products; and mechanically separated (species), except those ingredients processed by hydrolysis, extraction, concentrating or drying. The second category is designated "Group 2 protein-contributing ingredients" and covers all protein-contributing ingredients of slaughtered livestock or poultry origin which have been processed by hydrolysis, extraction, concentrating, or drying, and any other ingredient which contributes protein, such as plant products, dairy products, egg products, yeast products, or their derivatives.

These categories (Group 1 and Group 2) were developed without regard to the quality or value of the proteins, but were simply chosen to make clear what kinds of protein are traditionally considered as proteins of slaughtered livestock or poultry origin (Group 1) and those which may be of livestock or poultry origin, but which have been processed to a degree where they have lost their traditional identify and to include nonlivestock or nonpoultry protein substances (Group 2).

Third, FSIS has defined the term cooked sausage by providing a reference to § 319.140 and §§ 319.180–182 of the Federal meat inspection regulations which describe cooked sausages and provide standards of identity for sausage products. Because this rule pertains only to cooked sausages and sets forth the method for determining added water in cooked sausages, it was necessary to include a reference to the products covered by this rule.

Fourth, the description of the method used to calculate added water, set forth in the proposal, has been extensively revised. The revision is a result of the FSIS decision to permit one percent of Group 2 proteins to be credited as livestock or poultry protein. Therefore, it was necessary to revise § 318.22 as originally set forth in the proposal. This rule provides the detailed step-by-step procedure FSIS will use to calculate added water in cooked sausages.

Some processors may wish to reformulate their products as a result of this rule. To minimize any disruption, FSIS is providing an effective date of 180 days from the date of publication.

Final Rule

For reasons set forth in the preamble, part 318 is amended as set forth below:

List of Subjects in 9 CFR Part 318

Meat inspection, Preparation of product, Approval of substances.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 is revised to read as follows and the authority citations following the sections in part 318 are removed:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 451–470, 601–695; 33 U.S.C. 1254; 7 CFR 2.17, 2.55.

2. Part 318 is amended by adding a new § 318.22 to read as follows:

§ 318.22 Determination of added water in cooked sausages.

(a) For purposes of this section, the following definitions apply.

(1) *Cooked sausage.* Cooked sausage is any product described in § 319.140 and §§ 319.180–319.182 of this chapter.

(2) *Group 1 Protein-Contributing Ingredients.* Ingredients of livestock or poultry origin from muscle tissue which is skeletal or which is found in the edible organs, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing; meat byproducts; mechanically separated (species); and poultry products; except those ingredients processed by hydrolysis, extraction, concentrating or drying.

(3) *Group 2 Protein-Contributing Ingredients.* Ingredients from Gorup 1 protein-contributing ingredients processed by hydrolysis, extraction, concentrating, or drying, or any other ingredient which contributes protein.

(b) The amount of added water in cooked sausage is calculated by:

(1) Determining by laboratory analysis the total percentage of water contained in the cooked sausage; and

(2) Determining by laboratory analysis the total percentage of protein contained in the cooked sausage; and

(3) Calculating the percentage of protein in the cooked sausage contributed by the Group 2 protein-contributing ingredients; and

(4) Subtracting one pecent from the total percentage of protein calculated in (b)(3)); and

(5) Subtracting the remaining percentage of protein calculated in (b)(3) from the total protein content determined in (b)(2); and

(6) Calculating the percentage of indigenous water in the cooked sausage by multiplying the percentage of protein determined in (b)(5) by 4, (This amount is the percentage of water attributable to Group 1 protein-contributing ingredients and one percent of Group 2 protein-contributing ingredients in a cooked sausage.); and

(7) Subtracting the percentage of water calculated in (b)(6) from the total percentage of water determined in (b)(1). (This amount is the percentage of added water in a cooked sausage.) [1]

Done at Washington, DC, on: January 28, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 90–4641 Filed 2–28–90; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 90–163]

Operations; Outside Borrowing and Preferred Stock Authority Delegation Reference Removed

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision ("Office") is amending its regulations on outside borrowings and preferred stock by deleting the references to delegated authority. The delegation of authority concerning outside borrowings is being expanded to allow a District Director's designee to approve as well as deny any outside borrowings in excess of one year filed by savings associations who do not meet capital requirements. The delegation of authority concerning preferred stock is being expanded to allow the District Director authority to approve or deny any preferred stock applications which present no issues of policy or law. This expansion of authority will shorten the decision chain and enable the Office to respond more quickly and efficiently to outside borrowing notices and preferred stock applications.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Associate Deputy Director, Corporate and Securities Division, (202) 906–6465, Office of Thrift Supervision, Department of the Treasury, 1700 G Street NW., Washington, DC 20552, or Robyn Dennis, Financial Analyst, Supervision/Operations, (202) 331–4572, Office of Thrift Supervision, Department of the Treasury, 801 17th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Director of the Office of Thrift Supervision ("Director") has previously delegated significant elements of application and supervisory functions to the District Offices under the direction of the District Directors. The Office of Thrift Supervision, created by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law 101–73, 103 Stat. 183, intends to continue the process of delegation as the Director has determined that these and other recent delegations of authority will further improve the effectiveness of the supervisory and application functions.

As part of this continuing process, the Director, upon consideration of a recommendation by its Office of Supervision/Operations ("Supervision/Operations"), has determined that delegation of decisions relating to supervisory and application issues, currently involving Washington staff, can be more efficiently and effectively carried out by relying on the existing expertise at the District Offices, except for those decisions involving significant issues of policy or law upon which the Director has not taken a formal position.

This delegation does not diminish the statutory responsibility of the Director, through Supervision/Operations, to oversee, control, and where necessary improve application and supervisory functions. It will, however, expedite delivery of decisions.

Eventually it is anticipated all delegations currently in the regulations will be transferred to the Delegation Data Base maintained by the Secretariat of the Office. The Delegation Data Base will be published periodically and updated when necessary. This will provide a central repository for all delegations of authority including those currently in the regulations and those granted by Director's orders.

Pursuant to 5 U.S.C. 553 Administrative Procedure Act, the Director finds that, because these amendments relate to rules of the Office's organization, procedure, and practice, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12291

This revision of 12 CFR 563.75 and 563.80 does not fall within the scope of

[1] The equation for the narrative description of the calculation for added water is as follows: AW=TW-(TP-(P-1.0)]4. Where AW=Added Water, TW-Total Water Determined by Laboratory Analysis, TP=Total Protein Determined by Laboratory Analysis, P=Protein Contributed by Group 2 Protein-Contributing Ingredients, 1.0=Percent Allowance for Group 2 Protein-Contributing Ingredients, 4=Moisture-Protein Ratio for Cooked Sausage.

Executive Order 12291 as it is being done as a matter of agency organization and management by the Office.

List of Subjects in 12 CFR Part 563

Accounting, Advertising, Bank deposit insurance, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly the Office hereby amends part 563 subchapter D, chapter V, of title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462A); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

§ 563.75 [Amended]

2. Amend § 563.75 by removing paragraph (i).

3. Amend § 563.80 by revising paragraph (e)(2) to read as follows:

§ 563.80 Borrowing limitations.

* * * * *

(e) * * *

(2) The Office shall have ten (10) business days after receipt of such filing to approve or disapprove the issuance of such securities. The Office shall disapprove if the terms or covenants of the proposed issue place unreasonable burdens on, or convey undue control over, the operations of the association. If the issuance is approved, the savings association shall have one hundred twenty (120) calendar days within which to issue such securities.

* * * * *

Dated: January 22, 1990.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 90-4722 Filed 2-28-90; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-04-AD; Amdt. 39-6517]

Airworthiness Directives; Piper Models PA-60-600 (Turbocharged), PA-60-601, PA-60-601P, PA-60-602P, and PA-60-700P Airplanes and Ted Smith Aerostar (Butler Aircraft Company) Models 600 (Turbocharged), 601, 601A, 601B, and 601P Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting and amending Airworthiness Directive (AD) 90-01-02, which was previously made effective as to all known U.S. owners and operators of Piper Models PA-60-600 (turbocharged), PA-60-601, PA-60-601P, PA-60-602P, and PA-60-700P airplanes, and Ted Smith Aerostar Models 600 (turbocharged), 601, 601A, 601B, and 601P airplanes, by individual letters. The AD specified the installation of a Piper Engine Fire Detection System Kit to provide a warning to the pilot of a possible in-flight engine turbocharger exhaust tailpipe assembly failure and requires initial and periodic dismantling inspections of the engine turbocharger exhaust tailpipe assemblies. The AD was issued based upon a fatal accident attributed to tailpipe failure, which occurred only a few hours after a tailpipe inspection had been completed. This amendment to AD 90-01-02 exempts those airplanes that have been modified by STC SA980NM.

DATES: Effective March 1, 1990, as to all persons except those persons to whom it was made immediately effective by priority letter AD 90-01-02, issued January 5, 1990, which contained this amendment.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960, or may be examined in the Regional Rules Docket, FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Will H. Trammell, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: On January 5, 1990, priority letter AD 90-01-02 was issued and made effective immediately as to all known U.S. owners and operators of Piper Models PA-60-600 (turbocharged), PA-60-601, PA-60-601P, PA-60-602P, and PA-60-700P airplanes, and Ted Smith Aerostar Models 600 (turbocharged), 601, 601A, 601B, and 601P airplanes. The AD required the installation of a Piper Engine Fire Detection System Kit to provide a warning to the pilot of a possible in-flight engine turbocharger exhaust tailpipe assembly failure and requires initial and periodic dismantling inspections of the engine turbocharger exhaust tailpipe assemblies. The AD was prompted by a fatal accident attributed to tailpipe failure, which occurred only a few hours after a tailpipe inspection had been completed. Subsequent to the issuance of the Priority Letter AD, the FAA has determined that Aerostar Models incorporating the Machen Inc. STC SA980NM are exempt from the AD because of design differences and satisfactory service history. In addition, the applicability statement in the AD has been revised to reflect additional names under which the affected airplanes may be registered.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued January 5, 1990, to all known U.S. owners and operators of the aforementioned model airplanes. These conditions still exist, and the AD is hereby amended and published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with

respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 90-01-02 to read as follows:

Piper (Ted Smith Aerostar, Aerostar, Butler Aircraft Company): Applies to Piper Models PA-60-600 (turbocharged only), PA-60-601, PA-60-601P, PA-60-602P, and PA-60-700P (all serial numbers (S/N)) airplanes, and Ted Smith Aerostar (Butler Aircraft Company) Models 600 (turbocharged only), 601, 601A, 601B, and 601P (all S/N) airplanes, certificated in any category, except those airplanes incorporating Machen Supplemental Type Certificate (STC) SA980NM. Compliance is required as indicated in the body of the AD, unless already accomplished.

To alert the pilot of a nacelle overheat or fire condition which could result in damage to the wing structure, accomplish the following:

(a) Prior to further flight after the effective date of this AD, modify the airplane by installing Piper Engine Fire Detection System Kit, Piper Part Number 764-158, in accordance with the instructions in part II of the Piper Service Bulletin (SB) No. 920, dated August 7, 1989, and modify the Airplane Flight Manual/Pilot's Operating Handbook by inserting the appropriate supplement provided with the above kit.

(b) Prior to further flight after the effective date of this AD, and thereafter at intervals not to exceed 50 hours time-in-service, accomplish the dismantling inspections and reinstallation of the exhaust tailpipe assembly as specified in part I of Piper SB No. 920, dated August 7, 1989. If any discrepancies are found, prior to further flight repair the discrepancies in accordance with the above SB or appropriate Piper Maintenance Manual.

(c) Airplanes may be flown in accordance with FAR 21.197 and FAR 21.199 to a location where this AD may be accomplished.

(d) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960, or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment amends AD 90-01-02, which superseded AD 89-25-05, Amendment 39-6397.

This amendment becomes effective on March 1, 1990 as to all persons except those persons to whom it was made immediately effective by priority letter AD 90-01-02, issued January 5, 1990, which contained this amendment.

Issued in Kansas City, Missouri, on February 9, 1990.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-4623 Filed 2-28-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASW-19]

Alteration of VOR Federal Airways; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several VOR Federal Airways located in the Austin and San Antonio, TX, areas. These airway changes improve the flow of traffic in the Austin and San Antonio terminal areas. The Houston Air Route Traffic Control Center is presently undergoing a resectorization plan and these airway changes are necessary to support that plan. This action aids flight planning and reduces controller workload.

EFFECTIVE DATE: 0901 U.t.c., May 3, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On September 6, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign VOR Federal Airways V-68, V-558, V-565, V-574, and V-583 located in the vicinity of Austin and San Antonio, TX (54 FR 36997). These airway changes improve traffic flow in the Austin and San Antonio terminal areas. The Houston, TX, Air Route Traffic Control Center is presently undergoing a resectorization plan and these airway changes are necessary to support that plan. This action aids flight planning and reduces controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the descriptions of several VOR Federal Airways located in the Austin and San Antonio, TX, areas. These airway changes improve the flow of traffic in the Austin and San Antonio terminal areas. The Houston Air Route Traffic Control Center is presently undergoing a resectorization plan and these airway changes are necessary to support that plan. This action aids flight planning and reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-68 [Amended]

By removing the words "Junction, TX; San Antonio, TX;" and substituting the words "Junction, TX; Center Point, TX; San Antonio, TX;"

V-558 [Amended]

By removing the words "INT Austin 090° and Industry, TX, 310° radials; Industry;" and substituting the words "Industry, TX;"

V-565 [Amended]

By removing the words "to Austin" and substituting the words "Austin; College Station, TX; to Lufkin, TX"

V-574 [Amended]

By removing the words "From Navasota, TX, via" and substituting the words "From Austin, TX; INT Austin 109° and Navasota, TX 259° radials; Navasota;"

V-583 [Revised]

From Austin, TX; INT Austin 062° and College Station, TX, 270° radials; College Station; Leona, TX; Frankston, TX; to Quitman, TX.

Issued in Washington, DC, on February 21, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-4624 Filed 2-28-90; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Furnaces

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces revisions to the ranges of comparability for oil and gas furnaces and boilers published on December 20, 1989.[1] The revisions have been made in response to corrections and suggestions from industry trade associations. Like the ranges published on December 20, 1989, these revised ranges are based on the revised test procedure published by the Department of Energy (DOE) on February 7, 1989.[2] The December 20, 1989, Final Rule announced that ranges of comparability for electric furnaces and boilers, which are not affected by the test revision, will remain unchanged. This position will not be changed by today's final rule.

EFFECTIVE DATE: May 30, 1990.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 ("EPCA")[3] requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual cost of operation or alternative energy consumption information for at least thirteen categories of appliances. Forced-air furnaces and boilers are included as one of the categories. Before these labeling requirements may be prescribed, the statute requires DOE to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule[4] covering seven of the thirteen appliance categories, including furnaces and boilers. The rule requires that energy efficiency, cost of operation and related information be disclosed on fact sheets and in retail sales catalogs for all furnaces and boilers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a furnace or boiler is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then certain efficiency information concerning the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

The rule requires that each fact sheet show a range, or scale, indicating the range of energy efficiencies for all furnace and boiler models of a size or capacity comparable to the model to which the fact sheet pertains. These ranges show the highest and lowest energy efficiencies for the various size or capacity groupings of furnaces and boilers covered by the rule.

Under § 305.10(a) of the rule, the Commission is empowered to publish new ranges annually in the Federal Register, if appropriate. The rule specifies that it is appropriate to publish new ranges whenever the upper or lower limits of the range change by 15% or more from the previously published ranges. Otherwise, the Commission must publish a statement that the prior ranges remain in effect until new ranges are published.[5] However, in other circumstances publication of new ranges also may be appropriate.

On December 20, 1989, the Commission published new ranges because DOE changed part of its test procedure as it pertains to forced-air furnaces. As a result of this change, the energy efficiency measure (the annual fuel utilization efficiency) for many oil- and gas-fueled furnaces is slightly lower when tested under the revised procedure. The change does not affect the energy efficiency measure of boilers or the electric furnaces.

With the assistance of the Gas Appliance Manufacturers Association, the Commission's staff determined that, in most cases, the ranges for oil- and gas-fueled furnaces have changed

[1] 54 FR 52022.

[2] 54 FR 6062. The DOE test procedures went into effect on September 5, 1989.

[3] Pub. L. 94-163, 89 Stat. 871 (Dec. 22, 1975).

[4] 44 FR 66466, 16 CFR 305 (Nov. 19, 1979).

[5] In the case of furnaces and boilers, the Commission has never found it necessary to change the original ranges that were published on March 25 and April 17, 1980 (45 FR 19520 and 26036).

because of these new test results.[6] Although these limits generally changed by less than 15%, the Commission believed that these new ranges, which more accurately reflect the efficiencies of products in the marketplace, should be published. By publishing new ranges, the Commission intended to ensure that the efficiency ranges, as well as the other required efficiency disclosures appearing in the marketplace that must be based on the DOE procedure, will be derived from the same test procedure.

After the ranges were published, the Commission learned from the Hydronics Institute ("Hydronics"), a trade association representing manufacturers of boilers, that there were several errors in the published version due to the inadvertent omission of some boiler models from the ranges. In addition to pointing out the errors, Hydronics recommended that the Commission publish the ranges for gas-fueled and oil-fueled boilers separately from the ranges for gas-fueled and oil-fueled forced-air furnaces. Hydronics was joined in this recommendation by the Gas Appliance Manufacturers Association ("GAMA"), a trade association representing manufacturers of forced-air furnaces. The associations contended that consumers who are shopping for a forced-air furnace will not be assisted by energy usage information regarding boilers (and vice-versa), and that presenting information on both types of product in the same range could confuse consumers.[7] The Commission agrees with the associations, and herewith republishes the ranges for furnaces and boilers in a format that presents the information separately for each type of product.

In consideration of the foregoing, the Commission herewith publishes new ranges for gas-fueled and oil-fueled furnaces and boilers. Since the revisions to the DOE test procedure did not affect that part of the test pertaining to electric furnaces and boilers, the ranges for those products remain unchanged from the version published on March 25, 1980.[8]

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

[6] Some of the upper and/or lower limits of the ranges for these products changed, however, for reasons unrelated to the new test procedure.

[7] Since electric forced-air furnaces and boilers are virtually all 100% efficient, the above reasoning does not justify separate ranges for electric furnaces and boilers.

[8] 45 FR 19520, 19521.

Accordingly, 16 CFR part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Appendixes to Part 305 [Amended]

2. Appendix G3 is redesignated as G4, the title is revised and Item 1, Range Information is revised; Appendix G2 is redesignated as G3; Appendix G1 is revised; a new Appendix G2 is added; and a new Appendix G5 is added:

1. Range information:

Appendix G1—Forced-Air Furnaces—Gas

Comparability (BTU per hour)	Ranges of energy efficiency ratings	
	Low	High
5,000 to 10,000	(1)	(1)
11,000 to 16,000	(1)	(1)
17,000 to 25,000	66.4	73.7
26,000 to 42,000	58.8	96.6
43,000 to 59,000	58.2	95.0
60,000 to 76,000	58.1	94.9
77,000 to 93,000	59.3	94.0
94,000 to 110,000	60.0	94.0
111,000 to 127,000	63.0	92.6
128,000 to 144,000	61.9	92.6
145,000 to 161,000	62.2	92.6
162,000 to 178,000	(1)	(1)
179,000 to 195,000	(1)	(1)
196,000 and over	(1)	(1)

[1] No data submitted.

Appendix G2—Boilers—Gas

Comparability (BTU per hour)	Ranges of energy efficiency ratings	
	Low	High
5,000 to 10,000	(1)	(1)
11,000 to 16,000	(1)	(1)
17,000 to 25,000	65.0	82.7
26,000 to 42,000	66.4	85.3
43,000 to 59,000	61.0	90.4
60,000 to 76,000	64.1	84.7
77,000 to 93,000	63.1	90.5
94,000 to 110,000	63.7	84.4
111,000 to 127,000	62.6	90.1
128,000 to 144,000	63.8	90.6
145,000 to 161,000	65.6	87.4
162,000 to 178,000	65.9	84.9
179,000 to 195,000	64.0	85.1
196,000 and over	65.0	90.1

[1] No data submitted.

Appendix G4—Forced-Air Furnaces—Oil

1. Range information:

Comparability (BTU per hour)	Ranges of energy efficiency ratings	
	Low	High
5,000 to 10,000	(1)	(1)
11,000 to 16,000	(1)	(1)
17,000 to 25,000	(1)	(1)
26,000 to 42,000	(1)	(1)
43,000 to 59,000	78.3	86.7
60,000 to 76,000	75.0	88.9
77,000 to 93,000	67.9	89.1
94,000 to 110,000	73.5	86.0
111,000 to 127,000	72.7	86.7
128,000 to 144,000	73.3	83.7
145,000 to 161,000	65.5	86.0
162,000 to 178,000	74.3	82.7
179,000 to 195,000	78.0	81.4
196,000 and over	(1)	(1)

[1] No data submitted.

* * * * *

Appendix G5—Boilers—Oil

Comparability (BTU per hour)	Ranges of energy efficiency ratings	
	Low	High
5,000 to 10,000	(1)	(1)
11,000 to 16,000	(1)	(1)
17,000 to 25,000	(1)	(1)
26,000 to 42,000	(1)	(1)
43,000 to 59,000	(1)	(1)
60,000 to 76,000	81.7	87.6
77,000 to 93,000	77.8	88.1
94,000 to 110,000	78.1	88.7
111,000 to 127,000	75.4	87.5
128,000 to 144,000	74.9	87.6
145,000 to 161,000	72.5	87.4
162,000 to 178,000	74.5	87.6
179,000 to 195,000	72.1	87.4
196,000 and over	75.3	86.0

[1] No data submitted.

Donald S. Clark,

Secretary.

[FR Doc. 90–4291 Filed 2–28–90; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 90–17]

Country of Origin Rules Regarding Imported Textiles and Textile Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: In 1985, Customs published final regulations setting forth criteria to be used for determining the country of origin of certain imported textiles and textile products. These criteria are applied in making country of origin determinations for all Customs purposes, including determinations for purposes of country of origin marking and for assessing duty on imported

articles. This document changes positions and uniform and established practices regarding commercial processes and assembly operations performed on textiles which are inconsistent with the published country of origin criteria.

EFFECTIVE DATE: The change will be effective as to merchandise entered, or withdrawn from warehouse for comsumption on or after June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Classification and Value Division, (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

This document concerns certain Customs positions and practices relating to determining the country of origin of imported textiles and textile products which Customs is now changing. The subject positions and practices follow:

(1) The complete assembly of a garment in one country from pieces cut or otherwise manufactured in another country generally results in the country of assembly being considered the country of origin of the garment.

(2) Fabrics that are woven, knit or otherwise constructed in one country are considered, for all purposes, products of a second country if they are subjected to dyeing, printing (or dyeing and printing), bleaching, shower proofing (a process rendering the fabric water-repellent), or other finishing processes in the second country; and

(3) Lengths of fabric manufactured in one country and sent to another country for a single cutting and hemming (or overlocking) operation are considered products of the second country. In this circumstance, the material may be readily identifiable as being intended primarily for a particular purpose and the cutting is done only to establish the length or the width of the completed article.

By T.D. 85–38, published in the Federal Register on March 5, 1985 (50 FR 8710), Customs amended Part 12, Customs Regulations (19 CFR part 12), by adding a new § 12.130 which established criteria to be used by Customs officers in determining the country of origin of imported textiles and textile products for purposes of multilateral or bilateral textile agreements entered into by the U.S. pursuant to § 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854).

According to § 12.130, Customs Regulations (19 CFR 12.130), if an article consists of materials produced or derived from, or processed in more than one country, territory, or insular possession, the article shall be a product of the country, territory, or insular possession where it last underwent a substantial transformation. A textile or textile product will be considered to have undergone a substantial transformation if it has been transformed by means of a substantial manufacturing or processing operation into a new and different article of commerce.

Section 12.130(d) lists the criteria that will be considered in determining whether there has been a substantial manufacturing or processing operation and whether a new and different article of commerce has resulted. Section 12.130(e)(2) sets forth five examples of processes that will not usually result in a substantial transformation. Four of those examples are in conflict with previously announced Customs positions and with existing uniform and established practices.

Customs believes that the criteria set forth in § 12.130, which were derived from previous court decisions and administrative rulings involving substantial transformation determinations, should be used in making country of origin determinations for all Customs purposes, including determinations for purposes of country of origin marking and for assessing duty on imported articles. Accordingly, on August 2, 1985, Customs published a notice in the **Federal Register** (50 FR 31392), which proposed to conform previous origin determinations for duty and marking purposes with origin determinations being made for quota, visa and export license purposes pursuant to 7 U.S.C. 1854. Public comments were solicited.

The length of time between the notice and the final document is due to the significance of these changes to several segments of the importing public and domestic industry and the considerable interest of Congress and several other Federal agencies in all matters related to textiles. Customs was also expecting that pending legislation might have an impact on applying these changes of practice to the insular possessions. It was not until the passage of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) on August 23, 1988, that Customs concluded that there was no impediment to applying the changes of practices to the insular possessions.

Discussion of Comments

Thirteen comments were received in response to the notice. All opposed the proposal. A number of the comments dealt with policy and economic considerations which are not considered by Customs in determining whether the proposed changes of practice and position are, as a matter of law, clearly wrong. Therefore, these comments are not discussed in this document.

Effect on Insular Possessions

Most of the comments received were concerned with the effect the proposed changes would have on U.S. insular possessions. Some commenters believe all that is necessary for articles to receive the duty-free status accorded products of insular possessions by General Note 3(a)(iv), Harmonized Tariff Schedule of the United States (HTSUS), formerly General Headnote 3(a), Tariff Schedules of the United States (19 U.S.C. 1202), is for those articles to satisfy the value-content requirment of that headnote. A close reading of General Note 3(a)(iv), however, shows that Congress clearly required, in addition to a specified value added in the insular possession, that the articles (1) be either the growth or product of the insular possession or (2) be manufactured or produced in the insular possession from materials which were grown, produced, or manufactured in an insular possession or within the customs territory of the U.S., or both. A recent court case, *Yuri Fashions Co., Ltd.* v. *The United States, et al.*, 632 F. Supp. 41 (CIT 1986), clearly supports this reading of General Note 3(a)(iv). In view of the court's conclusion concerning the application of the headnote and the fact that the court considered most of the same arguments as presented in the comments received by Customs, no further discussion in this area is required.

Two commenters remarked that Customs cannot extend the rules of origin contained in § 12.130 because § 204, Agricultural Act of 1956, which provides the authority for that regulation, is not applicable to the insular possessions.

Customs does not agree. The rules of origin in § 12.130 are derived from the interpretation of judicial decisions and, as such, are required to be applied without regard to which countries, territories, or insular possessions are involved in the processing of an article. The authority of § 204, Agricultural Act of 1956, is not at issue.

The proposed changes do not change General Note 3(a)(iv), as some commenters assert. Rather, the changes are intended to conform origin determinations for tariff purposes for the four described processing operations for which practices or positions are known to exist, to determinations made in accordance with § 12.130. This is accomplished by interpreting the phase

"product of" in the same manner for each tariff-related statue in which that phrase is found.

Uniform Application of Standard

A number of commenters noted that recent court decisions have appeared to hold that the determination of the country of origin of articles depends on the particular statute under which that determination must be made and the intent of Congress in enacting that statute, and, therefore, depending on under which statute of a country of origin determination is being based, an article may have more than one country or origin.

Although such an inference may be drawn from language contained in some recent judicial decisions, Customs does not agree that the intended purpose of any of the statutes concerned requires standards to be applied which are different from the standard which Customs now seeks to uniformly apply. Customs also believes that application of the various statutes may not result in an article having more than one country of origin (*e.g.*, for marking, duty or textile restraint purposes) unless that result is explicity directed by statute.

Unless the courts hold that Customs should not apply the uniform standard in interpreting a particular statute, and that an article is to be considered a product of more than one country, Customs intends to continue its application of a unitary origin standard. Such a result is not only administratively expedient, but is legally required. Certain programs enacted by Congress are clearly intended to encourage investment and job training in lesser developed countries and insular possessions. The intent of such programs would not be accomplished by applying very loose or lenient criteria to country of origin determinations. To do so could result in minimal work or processing done in the beneficiary country, territory, or insular possession and encourage pass-through operations. It would do little to encourage capital investment and industrialization. On the other hand, a more stringent application of country of origin criteria requiring more substantial work or processing in the concerned countries, territories, and insular possessions has the direct effect of encouraging real economic development. The same strict or stringent application of country of origin criteria accomplishes the clear congressional intent of not allowing products of those countries and territories listed in General Note 3(b), HTSUS, to receive the preferential column 1 rates of duty; insures that articles which may be subject to import restrictions are correctly attributed to the allocations of the actual producing country, territory, or possession; and provides authoritative information concerning the true country of origin to the purchaser of imported goods.

One commenter maintained that the extension of § 12.130 "for all purposes" is beyond Customs authority. Another contended that Customs cannot act on this matter while Congress is considering legislation on the same issues.

Customs has been delegated the responsibility of administering and enforcing the tariff laws. To accomplish this, Customs is required to interpret and apply those laws in accordance with accepted rules of statutory construction and pertinent judicial decisions. The subject changes of practices and positions fall within this purview. If Congress should enact legislation in the future which would affect the changes, this does not alter Customs duty to interpret and apply the existing law.

The "Uniroyal" Test

Five commenters stated that Customs interpretation of, and reliance on, *Uniroyal, Inc.* v. *United States*, 3 CIT 220 (1982), as requiring both a new and different article and a substantial manufacturing or processing operation to constitute a substantial transformation, is incorrect and misplaced.

Uniroyal involved the country of origin marking of shoes further processed in the U.S. from uppers produced in Indonesia. It is Customs view that the decision in *Uniroyal* requires Customs to look at the significance of manufacturing or processing operations performed on an article, as well as the change in the article as a result of those operations. It is this approach to determining the country of origin of merchandise that is embodied in § 12.130. Customs believes that it is required to follow the reasoning of the court in *Uniroyal* in all country of origin determinations.

Some commenters cite the more recent cases of *Belcrest Linens* v. *United States*, 741 F. 2d 1368 (Fed. Cir. 1984), and *Torrington Co.* v. *United States*, 764 F. 2d 1563 (Fed. Cir. 1985), as standing for a different principle than *Uniroyal*. Those commenters believe that the only test for substantial transformation is whether a new and different article of commerce results from the manufacturing or processing operation(s) in a second country.

Customs finds nothing in *Belcrest*, *Torrington*, *Uniroyal*, or any other recent court decision on the country of origin of merchandise that requires an approach to determining origin which is at variance with the principles contained in § 12.130. *Belcrest*, which was most often cited by the commenters, involved cutting of fabric into pillowcases, scalloping with colored thread, and stitching along the sides to form the articles. Further, there was evidence, which the court accepted, that the fabric, before cutting, had other commercial uses. In arriving at its decision, the court specifically considered the amount and kind of processing done in the second country and stated the following test:

> In determining whether the combining of parts or materials constitutes a substantial transformation, the issue has been the extent of the operations performed *and* whether the parts lose their identity and become an integral part of a new article. [Emphasis added.]

In *Torrington*, the court also looked at the operations performed and concluded, "The production of needles from swages is clearly a significant manufacturing process, and not a mere 'pass-through' operation."

In the case of *National Juice Products Association* v. *United States*, 628 F. Supp. 978 (CIT 1986), the court again considered the amount and kind of processing in determining the country of origin of merchandise.

> Considering the process as a whole, the court concludes that Customs could rationally determine that the major part of the end product, when measured by cost, value, or quantity, is manufacturing concentrate and that the processing in the United States is a major manufacturing process.

We find no language which is adverse to our interpretation of *Uniroyal* in *Belcrest* or *National Juice*, both of which cite *Uniroyal* with approval, or in *Torrington*, and no language which is contradictory of the requirement in § 12.130 that a substantial transformation requires both a new and different article of commerce and substantial manufacturing or processing operations. To the contrary, all four cases contain language which clearly supports Customs view that the origin principles found in § 12.130 accurately reflect current applicable law.

Reliance on Prior Rulings

Three commenters mentioned that prior Customs rulings have been relied upon and, therefore, Customs should not change those rulings. While Customs Appreciates the predicament some manufacturers, importers and other

business persons may face, Congress recognized that Customs may develop practices that, for one reason or another, may be wrong, and authorized Customs to change those practices. To alleviate hardships caused in such situations, § 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), requires not less than a 30-day notice before any administrative change in an established and uniform practice resulting in higher rates of duty can take effect. In § 177.10(e), Customs Regulations (19 CFR 177.10(e)), that statutory requirement was expanded to require a 90-day delay after publication in the **Federal Register** of a final decision changing a practice. Such a final decision is preceded by an initial publication of a notice proposing the change and allowing the public an opportunity to submit comments for consideration before making any such change. Customs believes that it should conform its rulings to judicial decisions and if a practice, position, or ruling exists that is clearly contrary to the law, Customs is required to change that practice, position, or ruling.

One commenter opposed the proposed changes because, among other reasons, each change is concerned with a manufacturing or processing operation that is contended to constitute a substantial transformation. In this regard, Customs is convinced that when all the factors set out in § 12.130 are considered, the majority of the situations now covered by the subject practices or positions would not result in substantial transformation determinations. However, each factual situation will be considered on its own merits and there may be instances where, based on the specific facts presented, articles which presently fall within the subject practices or positions may, using the criteria contained in § 12.130, still be considered substantially transformed.

Other Comments

One commenter requested that silk articles be exempted from the proposed changes of practice. In the absence of statutory authority, Customs do not have the discretion to apply a different rule of origin based on the component material in an article. Accordingly, we cannot exempt silk from the proposed change of practice.

Another commenter pointed out that Hong Kong would particularly be affected by the changes in the country of origin for marking purposes; manufacturers would encounter significant problems in order to retain their "Made in Hong Kong" labels; Hong Kong's marking requirements; have developed in accordance with U.S. requirements; and change will result in confusion, requiring merchandise to be marked differently for different markets. One commenter noted that some articles from insular possessions will no longer bear the "Made in U.S.A. label. As stated earlier, Customs believes that it should follow the reasoning of the court in *Uniroyal* in all country of origin determinations, including the marking area. Exceptions cannot be made for particular countries, territories or insular possessions.

Another commenter stated that costs should not be determinative. In this regard, it is noted that the value added to an article in a particular country is only one factor to be considered. Customs is of the view that any one or combination of the listed factors, including cost or added value, may be the controlling factor in ascertaining the country of origin of an article.

Change of Practice

After careful analysis of the comments and further review of the matter, Customs believes the previously announced positions and existing uniform and established practices set forth at the beginning of this document are clearly wrong. Accordingly, the proposed changes are adopted and determinations of the country of origin of merchandise will be consistent with § 12.130, Customs Regulations, for all Customs purposes, including marking and assessment of duties.

Effective Date

The changes in practices and positions will be effective for textiles and textile products entered for consumption on or after June 29, 1990. This time period will provide affected parties sufficient time to arrange for the proper labelling of textile articles, either in the producing country or while under bond in the U.S., without a disruption of the normal stream of commerce.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Approved: February 23, 1990.

Carol Hallett,

Commissioner of Customs.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 90–4595 Filed 2–28–90 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960–AC27

[Regs. No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Employment, Wages, Self-Employment, and Self-Employment Income

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are revising several rules in subpart K—Employment, Wages, Self-Employment, and Self-Employment Income—of part 404 of the Social Security Administration's regulations. These revisions are required for the following reasons:

1. To reflect statutory enactments currently in effect;
2. To reflect certain policies regarding pay for work by certain members of religious orders;
3. To delete provisions of rules that were previously, but not currently, in effect; and
4. To clarify certain rules, combine where appropriate the rules contained in two sections into one section, and delete superfluous sections.

DATES: These regulations are effective March 1, 1990. Because the rules implementing section 9003 of Public Law 100–203 and section 8013 and 1011B(a)(23)(B) of Public Law 100–647 were not included in the Notice of Proposed Rulemaking (NPRM), we are publishing this rule as a final rule but will consider any comments concerning those provisions that we receive by April 30, 1990, and will revise such rule if public comment warrants.

ADDRESSES: Send comments to Commissioner of Social Security, HHS, P.O. Box 1585, Baltimore MD 21235.

FOR FURTHER INFORMATION CONTACT: C.H. Campbell, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1794.

SUPPLEMENTARY INFORMATION: We published these regulations as an NPRM on June 30, 1988, with a 60-day period for public comment (53 FR 24727). No comments were received within this period. Except for the revisions we made in proposed §§ 404.1049(a) and 404.1053 to reflect changes in the Social Security Act because of statutory

enactments, we did not change any of the NPRM provisions for this final rule.

These amendments revise several rules relating to coverage under Social Security. Most of the rules reflect legislative enactments for including or excluding certain categories of employers payments as wages under the Social Security Act. Additionally, two rules reflect statutory enactments concerning (1) whether work as a church employee is employment or self-employment and (2) the revocation of a minister's exemption from Social Security coverage. The remaining rules are being adopted for such reasons as affording greater clarity, reorganizing the material under a rule, or the consolidation of sections.

A section-by-section description of the revisions follows:

Section 404.1001 Introduction

We are revising paragraph (d)(3) of this section to provide a more comprehensive overview of the rules on wages for Social Security purposes.

Section 404.1026 Work for a Church or Qualified Church-Controlled Organization

We are amending paragraph (a) of this section to conform it with the provisions of section 1882 of Public Law 99–514 (the Tax Reform Act of 1986) designating some church employees' income as self-employment.

Section 404.1041 Wages

We are adding paragraphs (e) and (f) to this section to provide a more comprehensive treatment of wages in general. Paragraph (e) describes employment where wages are counted only when paid in cash. Paragraph (f) concerns payment for services by home workers.

We are also amending paragraph (d) of this section to make it consistent with the added paragraphs (e) and (f). The unamended paragraph (d) would imply that wages cannot be restricted to cash payments alone in certain kinds of employment.

Section 404.1042 Wages when Paid and Received

We are adding a paragraph (f) to this section to reflect enactment of section 324(c)(1) of Public Law 98–21 (the Social Security Amendments of 1983) which amended section 209 of the Social Security Act. This new paragraph (f) will indicate when payments to an employee under a nonqualified deferred compensation plan are creditable as wages.

Section 404.1046 Pay for Work by Certain Members of Religious Orders

We are adding a new provision on crediting as wages the payments received by a member of a religious order who works for a third party.

Section 404.1048 Contribution and Benefit Base After 1981

We are deleting reference to 1981 earnings as a benefit base. This change was made for the purpose of affording greater clarity to the subpart.

Section 404.1049 Payments under an Employer Plan or System that are Excluded from Wages

We are amending paragraphs (a) and (b) and adding paragraph (c) to this section to reflect the amendment of paragraphs (b) and (m)(1)(C) of section 209 of the Social Security Act by paragraphs (c)(1) and (c)(3) of section 324 of Public Law 98–21 (the Social Security Amendments of 1983). These statutory provisions change the prior exclusions from wages of the payments made on account of retirement under an employer's plan or system.

We are also amending paragraph (a) to include as wages the cost of employer-provided group-term life insurance when that cost is includible in an employee's gross income for tax purposes. This reflects section 9003 of Public Law 100–203, the Omnibus budget Reconciliation Act of 1987, and is effective with respect to group-term life insurance in effect after 1987. However, because of the subsequent enactment of section 8013 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647), the employer-provided group-term life insurance costs can still be excluded from the employee's wages if the employee terminates his or her employment before January 1, 1989, and certain other conditions set forth in the regulation are met.

Section 404.1050 Retirement Payments

We are changing this section, which describes what retirement payments are excluded from wages, to reflect subsections (b) and (m)(1) of section 209 of the Social Security Act as amended by paragraph (c)(3) of section 324 of Public Law 98–21 (the Social Security Amendments of 1983).

Section 404.1051 Payments on account of sickness or accident disability, or related medical or hospitalization expenses

We are combining § 404.1051A with this section. Section 404.1051A describes the sick payments paid an employee in the 6-month period after his or her work stopped and whether these payments are wages. Since we are combining the provisions of these two sections, we are deleting § 404.1051A.

Section 404.1052 Payments from or to certain tax exempt trusts or payments under or into certain annuity plans

We are combining the current § 404.1053, which states the rule on the exclusion from wages of annuity plan payments, with this section, which states the rule on the exclusion from wages of payments from or to certain tax-exempt trusts.

This revised section and new § 404.1053 (discussed below) contain some but not all the wage exclusions listed under section 209(e) of the Act. The few exclusions that are not contained in the regulations are self-executing nondiscretionary statutory provisions that require no implementing policies or interpretations by the Secretary of Health and Human Services.

Section 404.1053 "Qualified Benefits" under a Cafeteria Plan

We are adding a new § 404.1053 to provide for excluding "qualified benefits" under a cafeteria plan from a person's wages to reflect the amendment of section 209(e) of the Social Security Act by section 1151(d)(2)(C) of Public Law 99–514 (the Tax Reform Act of 1986) and section 1011B(a)(23)(B) of Public Law 100–647 (the Technical and Miscellaneous Revenue Act of 1988).

Section 404.1054 Payments by an employer of an employee's tax or employee's contribution under State law

We are renumbering current § 404.1055 as § 404.1054. We are also deleting from the renumbered section the provisions of the rule that were in force prior to January 1, 1981, for most employment and the special provisions in effect prior to January 1, 1984, for State or local employment.

The current § 404.1054 provisions, which provide for excluding from an employee's wages the employer's payments into a bond purchase plan for the employee, are no longer in effect because of the enactment of section 491 of Public Law 98–369 (the Deficit Reduction Act of 1984). This bond purchase plan wage exclusion was no longer in effect beginning January 1, 1984, and, consequently, will be deleted from the regulations.

Section 404.1058 Special Situations

We are renumbering current § 404.1059 as § 404.1058. In addition, we are making the following two changes:

1. We are amending paragraph (a) to clarify the rule on the $100 standard for determining whether a home worker's payments are wages. The clarification will describe how this standard would apply to the home worker who is a common-law employee as described in § 404.1007 and to the home worker who meets the requirements described in section 210(j)(3)(C) of the Social Security Act.

2. We are deleting the provisions in paragraph (g) that are no longer in effect as a result of section 324(c)(3)(B) of Public Law 98–21 (the Social Security Amendments of 1983).

Section 404.1068 Employees who are Considered Self-Employed

We are amending paragraph (f) to reflect section 1882 of Public Law 99–514 (the Tax Reform Act of 1986) concerning the special rules for determining the amount of a person's self-employment income if he or she works for a church or church-controlled organization which has elected not to participate in the Social Security program.

Section 404.1070 Christian Science Practitioners

We are amending this section to reflect enactment of section 1704 of Public Law 99–514 (the Tax Reform Act of 1986), which permits Christian Science practitioners to revoke an exemption from Social Security coverage and payment of the self-employment tax.

Section 404.1071 Ministers and Members of Religious Orders

We are also amending this section to reflect enactment of section 1704 of Public Law 99–514 (the Tax Reform Act of 1986). These statutory provisions permit ministers and members of religious orders who have not taken a vow of poverty to revoke an exemption from Social Security coverage and payment of the self-employment tax.

Renumbering, Removal, and Reserving of Sections

We are making the following renumbering changes:

Current Section Number	*Renumbered Section Number*
§ 404.1055	§ 404.1054
§ 404.1056	§ 404.1055
§ 404.1057	§ 404.1056
§ 404.1058	§ 404.1057
§ 404.1059	§ 404.1058
§ 404.1060	§ 404.1059

We are deleting § 404.1051A but reserving § 404.1060.

Regulatory Procedures

Justification for Dispensing With Rulemaking Procedures

In addition to the rules proposed in the NPRM, these final rules also contain provisions implementing section 9003 of Public Law 100–203 and sections 8013 and 1011B(a)(23)(B) of Public Law 100–647. The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds good cause for dispensing with such procedures because they are unnecessary. Section 209(b) of the Act, as amended by section 9003 of Public Law 100–203 and section 8013 of Public Law 100–647, now includes as wages the cost of employer-provided group-term life insurance when that cost is included in an employee's wages as gross income for tax purposes, unless employment terminated before January 1, 1989. Section 209(e) of the Act, as amended by section 1011B(a)(23)(B) of Public Law 100–647, applies some restrictions on excluding "qualified benefits" under a cafeteria plan from a person's wages. The regulations implementing these statutory provisions merely reflect the terms of the statutory provisions and do not represent any exercise of discretion or administrative policy choice. Accordingly, we have determined that good cause exists for waiving notice and comment procedures since opportunity for public comment is unnecessary.

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and the Secretary has determined that this is not a major rule. Therefore, a regulatory impact analysis is not required.

Most of these regulations are based on statutory provisions that are already being implemented by the Internal Revenue Service (IRS). Collection of an increased Social Security tax when necessary because of these statutory provisions is presently being done by IRS. The changes are being made simply to conform the SSA regulations to the statutory provisions. Since IRS has the responsibility for enforcing the statutory provisions, and this enforcement is being undertaken independent of these regulations, these regulations are not the direct cause of the cost impact on the public.

One regulation is based on a Social Security Ruling and not on a statutory provision. However, the cost impact from this regulation is negligible. The remaining regulations clarify language, combine sections with related provisions, or delete obsolete provisions, and consequently, involve no costs.

Additionally, these changes in the regulations are not expected to significantly increase the hours and duties of Social Security Administration personnel. Hence, administrative costs and workyear increases are expected to be negligible.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements requiring the Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities. The rules pertaining to certain categories of employer payments being included or excluded as wages can affect the amount of the Social Security tax to be paid by businesses and other small entities. However, these provisions simply state, without much elaboration, very specific statutory provisions. Therefore, these statutory provisions are being implemented with no regulatory discretion. Moreover, enforcement of these statutory provisions for the most part is the responsibility of the Internal Revenue Service which determines and collects the appropriate tax under the Federal Insurance Contributions Act or Self-Employment Contributions Act. It is anticipated these regulations will have a minimal overall economic impact and a regulatory flexibility analysis, as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Catalog of Federal Domestic Assistance Programs: No. 13.802 Social Security Disability Insurance; No. 13.803 Social Security—Retirement Insurance; No. 13.805 Social Security—Survivors Insurance.

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

Dated: October 31, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: January 16, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 404 of Chapter III, title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950—)

1. The authority citation for subpart K is revised to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 429(a), 430, 431, and 1302; Secs. 1151(d)(2)(C), 1704, and 1882 of Pub. L. 99–514; 100 Stat. 2505, 2779, and 2914; Sec. 9003 of Pub. L. 100–203; 101 Stat. 1330–287; Secs. 1011B(a) (23)(B) and 8013 of Pub. L. 100–647; 102 Stat. 3486 and 3789.

2. Section 404.1001 is amended by revising paragraph (d)(3) to read as follows:

§ 404.1001 Introduction.

* * * * *

(d) * * *

(3) The rules on wages are found in §§ 404.1041 through 404.1059. We describe what is meant by the term "wages," discuss the various types of pay that count as wages, and state when the pay counts for Social Security purposes. We include explanations of agriculture labor, domestic services, service not in the course of the employer's business, and home worker services under "wages" because special standards apply to these services.

* * * * *

3. Section 404.1026 is amended by revising paragraph (a) to read as follows:

§ 404.1026 Work for a church or qualified church-controlled organization.

(a) *General.* If you work for a church or qualified church-controlled organization, as described in this section, your employer may elect to have your services excluded from employment. You would then be considered to be self-employed and special conditions would apply to you. See § 404.1068(f) for those special conditions. The employer's election of the exclusion must be made with the Internal Revenue Service in accordance with Internal Revenue Service procedures and must state that the church or church-controlled organization is opposed for religious reasons to the payment of Social Security employment taxes. The exclusion applies to current and future employees. If you work in an unrelated trade or business (within the meaning of section 513(a) of the Code) of the church or church-controlled organization, the exclusion does not apply to your services.

* * * * *

4. Section 404.1041 is amended by revising paragraph (d) and adding paragraphs (e) and (f) to read as follows:

§ 404.1041 Wages.

* * * * *

(d) Your wages can be in any form. You can be paid in cash or something other than cash, for example, in goods or clothing. (See paragraphs (e) and (f) of this section for kinds of employment where cash payments alone are considered wages and § 404.1043(b) concerning the value of meals and lodging as wages.) If your employer pays you cash for your meals and lodging on a regular basis as part of your employment, these payments may be considered wages. Payments other than cash may be counted as wages on the basis of the fair value of the items when paid.

(e) In certain kinds of employment, cash payments alone count as wages. These types of employment are agricultural labor, domestic services, and services not in the course of the employer's trade or business.

(f) To count as wages, payments for services performed by home workers who are employees as described in § 404.1008(d) must be in cash and must amount to $100 or more in a calendar year. Once this cash pay test is met, all remuneration paid, whether in cash or kind, is also wages.

5. Section 404.1042 is amended by adding paragraph (f) to read as follows:

§ 404.1042 Wages when paid and received.

* * * * *

(f) *Payments under nonqualified deferred compensation plans.* Amounts that an employee is entitled to receive under nonqualified deferred compensation plans (plans that do not qualify for special tax treatment under the Code) are creditable as wages for Social Security purposes at the later of the following times:

(1) When the services are performed; or

(2) When there is no longer a substantial risk of forfeiture (as defined in section 83 of the Code) of the employee's rights to the deferred compensation.

Any amounts taken into account as wages by this paragraph (and the income attributable thereto) will not thereafter be treated as wages for Social Security purposes.

6. Section 404.1046 is revised to read as follows:

§ 404.1046 Pay for work by certain members of religious orders.

(a) If you are a member of a religious order who has taken a vow of poverty (§ 404.1023), and the order has elected Social Security coverage under section 3121(r) of the Code, your wages are figured in a special way. Your wages, for Social Security purposes, are the fair market value of any board, lodging, clothing, and other items of value furnished to you by the order, or furnished to the order on your behalf by another organization or person under an agreement with the order. See paragraph (b) of this section if you perform services for a third party. The order must report at lease $100 a month for each active member. If the fair market value of items furnished to all members of a religious order does not vary significantly, the order may consider all members to have a uniform wage.

(b) If you perform services for a third party, the following rules apply:

(1) If you perform services for another agency of the supervising church or an associated institution, any amounts paid based on such services, whether paid directly to you or to the order, do not count on wages. Only wages figured under (a) above, are counted.

(2) If you perform services in a secular setting as an employee of a third party not affiliated or associated with the supervising church or an associated institution, any amounts paid based on such services, whether paid directly to you or to the order, count as wages paid to you by the third party. These wages are in addition to any wages counted under paragraph (a) of this section.

7. Section 404.1048 is amended by revising paragraph (a) to read as follows:

§ 404.1048 Contribution and benefit base after 1981.

(a) *General.* The contribution and benefit base after 1981 is figured under the formula described in paragraph (b) of this section in any calendar year in which there is an automatic cost-of-living increase in old-age, survivors, and disability insurance benefits. For purposes of this section, the calendar year in which the contribution and benefit base is figured is called the determination year. The base figured in the determination year applies to wages paid after (and taxable years beginning after) the determination year.

* * * * *

8. Section 404.1049 is amended by redesignating the present paragraphs (c) through (e) as paragraphs (d) through (f), revising paragraphs (a) and (b), and adding a new paragraph (c) to read as follows:

§ 404.1049 Payments under an employer plan or system that are excluded from wages.

(a) Payments to, or on behalf of, you or any of your dependents under your employer's plan or system are excluded from wages if made because of you or your dependents'—

(1) Medical or hospitalization expenses connected with sickness or accident disability; or

(2) Death, except that the exclusion does not apply to payments for group-term life insurance to the extent that the payments are includible in the gross income of the employee under the Internal Revenue Code of 1986, effective with respect to group-term life insurance coverage in effect after 1987 for employees whose employment, for the employer (or successor of that employer) providing the insurance coverage, does not end prior to 1989. Such payments are wages, however, if they are for coverage for an employee who was separated from employment prior to January 1, 1989, if the payments are for any period for which the employee is reemployed by the employer (or successor of that employer) after the date of separation.

(b) Payments to you or your dependents under your employer's plan at or after the termination of your employment relationship because of your death or retirement for disability are excluded from wages.

(c) Payments made after 1983 to you or your dependents under your employer's plan at or after the termination of your employment relationship because of retirement after reaching an age specified in the plan or in a pension plan of the employer are not excluded from wages unless—

(1) The payments are to or from a trust or annuity plan of your employer as described in § 404.1052; or

(2) An agreement to retire was in effect on March 24, 1983, between you and your employer and the payments made after 1983 under a nonqualified deferred compensation plan (see § 404.1042(f)) are based on services performed for your employer before 1984.

* * * * *

9. Section 404.1050 is revised to read as follows:

§ 404.1050 Retirement payments.

Payments made after 1983 to you (including any amount paid by an employer for insurance or annuities) on account of your retirement for age are not excluded from wages unless—

(a) The payments are to or from a trust or annuity plan of your employer as described in § 404.1052; or

(b) The payments satisfy the requirements described in § 404.1049(c)(2).

10. Section 404.1051 is revised to read as follows:

§ 404.1051 Payments on account of sickness or accident disability, or related medical or hospitalization expenses.

(a) We do not include as wages any payment that an employer makes to you, or on your behalf, on account of your sickness or accident disability, or related medical or hospitalization expenses, if the payment is made more than 6 consecutive calendar months following the last calendar month in which you worked for that employer. Payments made during the 6 consecutive months are included as wages.

(b) The exclusion in paragraph (a) of this section also applies to any such payment made by a third party (such as an insurance company). However, if you contributed to your employer's sick pay plan, that portion of the third party payments attributable to your contribution is not wages.

(c) Payments of medical or hospitalization expenses connected with sickness or accident disability are excluded from wages beginning with the first payment only if made under a plan or system of your employer as explained in § 404.1049(a)(1).

(d) Payments under a worker's compensation law are not wages.

§ 404.1051A [Removed]

11. Section 404.1051A is removed.

12. Section 404.1052 is revised to read as follows:

§ 404.1052 Payments from or to certain tax exempt trusts or payments under or into certain annuity plans.

(a) We do not include as wages any payment made—

(1) Into a tax-exempt trust or annuity plan by your employer on behalf of you or your beneficiary; or

(2) From a tax-exempt trust or under an annuity plan to, or on behalf of, you or your beneficiary.

(b) The trust must be exempt from tax under sections 401 and 501(a) of the Code, and the annuity plan must be a plan described in section 403(a) of the Code when payment is made.

(c) The exclusion does not apply to payments to an employee of the trust for work done as an employee of the trust.

13. Section 404.1053 is revised to read as follows:

§ 404.1053 "Qualified benefits" under a cafeteria plan.

We do not include as wages any "qualified benefits" under a cafeteria plan as described in section 125 of the Code if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received. This includes any "qualified benefit" made to you, or on your behalf, pursuant to a salary reduction agreement between you and your employer. The Internal Revenue Service decides whether any plan is a cafeteria plan under section 125 of the Code and whether any benefit under the plan is a "qualified benefit."

§ 404.1054 [Removed]

14. Section 404.1054 is removed.

§§ 404.1055, 404.1056, 404.1057, 404.1058, 404.1059, and 404.1060 [Redesignated]

15. Sections 404.1055, 404.1056, 404.1057, 404.1058, 404.1059, and 404.1060 are redesignated §§ 404.1054, 404.1055, 404.1056, 404.1057, 404.1058, and 404.1059 respectively and § 404.1060 is reserved.

16. Newly redesignated § 404.1054 is revised to read as follows:

§ 404.1054 Payments by an employer of employee's tax or employee's contribution under State law.

(a) We exclude as wages any payment by an employer (described in paragraph (b) of this section) that is not deducted from the employee's salary (or for which reimbursement is not made by the employee) of either—

(1) The tax imposed by section 3101 of the Code (employee's share of "Social Security tax"); or

(2) Any payment required from an employee under a State unemployment compensation law.

(b) The payments described in paragraph (a) of this section are not included as wages only if they are made by an employer on behalf of an employee employed in—

(1) Domestic service in the private home of the employer; or

(2) Agricultural labor.

17. In newly redesignated § 404.1058, paragraphs (a)(1) and (a)(2)(iii) are revised, paragraphs (a)(2)(iv) and (a)(2)(v) are added, and paragraph (g) is revised to read as follows:

§ 404.1058 Special situations.

(a) * * *

(1) The $100 standard. We do not include as wages cash pay of less than $100 paid to you in a calendar year by an employer for services not in the

course of the employer's trade or business (nonbusiness work) and for services as a home worker as described in § 404.1008(d).

(2) * * *

(iii) The noncash payments an employer pays you for services not in the course of the employer's trade or business are not wages even if the employer has paid you cash wages of $100 or more in the calendar year for services of that type.

(iv) Amounts paid to you as a home worker as described in § 404.1008(d) are not wages unless you are paid $100 or more in cash in a calendar year. If you meet this test, any noncash payments you receive for your services also count as wages.

(v) Amounts paid to you as a home worker in a common-law employment relationship (see § 404.1007) count as wages regardless of amount or whether paid in cash or kind.

* * * * *

(g) *Payments to an employee who is entitled to disability insurance benefits.* We do not include as wages any payments made by an employer to an employee if at the time such payment is made—

(1) The employee is entitled to disability insurance benefits under the Act;

(2) The employee's entitlement to such benefits began before the calendar year in which the employer's payment is made; and

(3) The employee performed no work for the employer in the period in which the payments were paid by such employer (regardless of whether the employee worked in the period the payments were earned).

* * * * *

18. Section 404.1068 is amended by revising paragraph (f) to read as follows:

§ 404.1068 Employees who are considered self-employed.

* * * * *

(f) *Employees of a church or church-controlled organization that has elected to exclude employees from coverage as employment.* If you perform services that are excluded from employment as described in § 404.1026, you are engaged in a trade or business. Special rules apply to your earnings, which are known as church employee income. If you are paid $100 or more in a taxable year by an employer who has elected to have its employees excluded, those earnings are self-employment income (see § 404.1096(c)(1)). In figuring your church employee income you may not reduce that income by any deductions attributable to your work. Your church employee income and deductions may not be taken into account in determining the amount of other net earnings from self-employment. Your church employee income is not exempt from self-employment tax under the exemption otherwise available to members of certain religious groups (see § 404.1075).

19. Section 404.1070 is revised to read as follows:

§ 404.1070 Christian Science practitioners.

If you are a Christian Science practitioner, the services you perform in the exercise of your profession are a trade or business unless you were granted an exemption from coverage under section 1402(e) of the Code, and you did not revoke such exemption in accordance with section 1704(b) of the Tax Reform Act of 1986. An exemption cannot be granted if you filed a valid waiver certificate under the provisions that apply to taxable years ending before 1968.

20. Section 404.1071 is amended by revising paragraph (a) to read as follows:

§ 404.1071 Ministers and members of religious orders.

(a) If you are a duly ordained, commissioned, or licensed minister of a church, or a member of a religious order who has not taken a vow of poverty, the services you perform in the exercise of your ministry or in the exercise of duties required by the order (§ 404.1023(c) and (e)) are a trade or business unless you filed for and were granted an exemption from coverage under section 1402(e) of the Code, and you did not revoke such exemption in accordance with section 1704(b) of the Tax Reform Act of 1986. An exemption cannot be granted if you filed a valid waiver certificate under the provisions that apply to taxable years ending before 1968.

* * * * *

[FR Doc. 90-4588 Filed 2-28-90; 8:45 am]

BILLING CODE 4190-11-M

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20 CFR Parts 404 and 416

RIN 0960-AB78

Federal Old-Age, Survivors, and Disability Insurance Benefits and Supplemental Security Income for Aged, Blind, and Disabled; Recovery of Overpayments and Other Technical Changes

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final rules reflect section 12113 of Pub. L. 99-272 (Consolidated Omnibus Budget Reconciliation Act of 1985 enacted April 7, 1986). The legislation treats a Social Security or a supplemental security income (SSI) benefit payment made by direct deposit to a joint account in a financial institution after the death of a beneficiary to whom the payment is directed as an overpayment in certain cases. Section 12113 was effective for notices of death we receive on and after April 7, 1986. Also, we are making technical changes to the title II regulations unrelated to the provisions of Pub. L. 99-272. These changes clarify how we determine disability insured status in certain situations and correct an erroneous cross-reference.

EFFECTIVE DATES: These regulations are effective March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (301) 965-1769.

SUPPLEMENTARY INFORMATION:

Background

Pub. L. 99-272 was signed into law on April 7, 1986. Section 12113 of this statute amends sections 204(a) and 1631(b) of the Social Security Act (the Act) to provide that when Social Security or SSI benefits are paid to a deceased individual by means of direct deposit to a jointly owned account, the payments will, in certain situations, be considered overpayments to the surviving owner of the joint account.

Prior to enactment of section 12113 of Pub. L. 99-272, we treated a Social Security or an SSI benefit payment made to a deceased individual by means of direct deposit as an incorrect payment. We notified the Treasury Department of the incorrect payment so that it could commence action to reclaim the incorrect payment. The incorrect payment directed to a deceased beneficiary was not considered an overpayment to the surviving owner of the joint account and the surviving owner was, therefore, not able to request that we waive the recovery of the overpayment pursuant to sections 204(b) and 1631(b) of the Act. Moreover, because these payments were not considered overpayments, we could not use sections 204(a) and 1631(b) of the Act as authority to collect the incorrect payments from benefits due to the surviving owner of the joint account.

Title II—Statutory Provision

Under section 204(a) of the Act, as amended by section 12113 of Pub. L. 99-272, when any payment is made to an

individual who has died, and the payment—

1. Is made by direct deposit to a financial institution;

2. Is credited by the financial institution to a joint account of the deceased individual and another person; and

3. The other person was entitled to a monthly benefit on the basis of the same earnings record as the deceased individual for the month immediately preceding the month of death, then the amount of the payment in excess of the correct amount shall be treated as an overpayment to the other person.

Title XVI—Statutory Provision

Under section 1631(b) of the Act, as amended by section 12113 of Pub. L. 99–272, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and the payment—

1. Is made by direct deposit to a financial institution; and

2. Is credited by the financial institution to a joint account of the deceased individual and another person; and

3. The other person is the surviving spouse of the deceased individual and was eligible for a payment under title XVI (including any State supplementation payment paid by the Secretary) as an eligible spouse (or as either member of an eligible couple) for the month in which the deceased individual died, then the amount of the payment in excess of the correct amount shall be treated as an overpayment to the other person.

General Statutory Provisions

For titles II and XVI, section 12113 of Pub. L. 99–272 applies in the case of deaths of which we are first notified on or after April 7, 1986.

The effects of section 12113 are to make such payments overpayments and to redirect responsibility for the recovery of these overpayments from the Treasury Department to the Social Security Administration for recovery under regulations promulgated by the Secretary of Health and Human Services. Recovery of the overpayment from the surviving joint account owner is required under sections 204(a) and 1631(b) of the Act, and he or she has the same right to request waiver under sections 204(b) and 1631(b) as any other person.

This final rule adds the title II provisions of section 12113 of Pub. L. 99–272 to § 404.501 of our regulations and the title XVI provisions to § 416.537 of our regulations.

Other Technical Changes

Subpart B of Part 404

The regulations at § 404.130(a) through (e) contain the rules we use to determine if a claimant is insured for purposes of establishing a period of disability or becoming entitled to disability insurance benefits. Section 404.130(f) explains what quarters we do not count to determine the 40-quarter or other period required in the preceding paragraphs.

Section 404.130(f) of the regulations implies that, if the claimant had a prior period of disability, the prior period of disability must be excluded in the computation to be used. This implication is misleading. We have long recognized that situations may occur in which a more favorable disability insured status determination will result if a previous period of disability is not excluded, and we have included those periods in the computation where appropriate. This is in accordance with section 220 of the Act which requires that periods of disability shall not be used for computation purposes in any case in which their use would result in the denial or lessening of monthly benefits which would otherwise be payable.

We are adding a sentence to § 404.130(f) to clarify that we will count or will not count, as appropriate, all the quarters in the prior period of disability established if by doing so a claimant would be entitled to benefits or the benefit would be larger. The sentence we are adding to the end of paragraph (f) reads as follows:

However, we will count all the quarters in the prior period of disability established for you if by doing so you would be entitled to benefits or the benefit would be larger.

Subpart F of Part 404

Sections 404.503(b)(1)(i), 404.503(b)(3), and 404.503(b)(6) contain cross-references to subpart L. The regulations in subpart L were recodified and moved to subpart D (44 FR 34481, June 15, 1979). We are making technical changes to correct the cross-references as follows:

Section 404.503(b)(1)(i) cross-reference is to read § 404.347; and

Sections 404.503(b)(3) and 404.503(b)(6) cross-reference is to read § 404.374.

Regulatory Procedures

The Department generally follows the Notice of Proposed Rulemaking and public comment procedures specified in the Administrative Procedure Act, 5 U.S.C. 553(b)(B), in the development of its regulations. That Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of proposed rulemaking and public comment procedures in this regulation because we are only amending our regulations to reflect self-executing provisions of the Act that required no setting of policy for their implementation and to make conforming technical changes to reflect the deletion of subpart L of part 404 in 1979. Therefore, opportunity for prior public comment is unnecessary and these amendments are being issued as final rules.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. The section 12113 provisions of Pub. L. 99–272 are nondiscretionary. Annual program costs associated with this statutory change are estimated to be $10 million. Annual administrative costs and workyears required for processing this workload are estimated at $7 million and 215 workyears, respectively. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no reporting/recordkeeping requirements requiring the Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because these regulations will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act of 1980, is not required.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.804 Social Security—Survivor's Insurance; 13.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors, and Disability.

20 CFR Part 416

Administrative practice and procedure; Aged; Blind; Disability benefits; Public assistance programs; Supplemental Security Income.

Dated: October 31, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: January 16, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Parts 404 and 416 of Chapter III of Title 20, Code of Federal Regulations, are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

1. The authority citation for part 404, subpart B continues to read as follows:

Authority: Secs. 205(a), 212, 213, 214, 216, 217, 223, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 412, 413, 414, 416, 417, 423, and 1302.

2. Section 404.130 is amended by adding a sentence to the end of paragraph (f) to read as follows:

§ 404.130 How we determine disability insured status.

* * * * *

(f) *How we determine the 40-quarter or other period.*

* * * * *

* * * However, we will count all the quarters in the prior period of disability established for you if by doing so you would be entitled to benefits or the amount of the benefit would be larger.

3. The authority citation for part 404, subpart F is revised to read as set forth below and the authority citation following section 404.501 is removed.

Authority: Secs. 204(a)–(d), 205(a), and 1102 of the Social Security Act; 42 U.S.C. 404(a)–(d), 405(a), and 1302.

4. Section 404.501 is amended by adding new paragraph (c) to read as follows:

§ 404.501 General applicability of section 204 of the Act.

* * * * *

(c) *Payments made by direct deposit to a financial institution.* When a payment in excess of the amount due under title II of the Act is made by direct deposit to a financial institution to or on behalf of an individual who has died, and the financial institution credits the payment to a joint account of the deceased individual and another person who was entitled to a monthly benefit on the basis of the same earnings record as the deceased individual for the month before the month in which the deceased individual died, the amount of the payment in excess of the correct amount will be an overpayment to the other person.

§ 404.503 [Amended]

5. Section 404.503 is amended by revising the cross-reference in § 404.503(b)(1)(i) to read § 404.347 and the cross-reference in §§ 404.503(b)(3) and 404.503(b)(6) to read § 404.374.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

1. The authority citation for part 416, subpart E is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and 1631 (a), (b), (d), and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382(c), and 1383 (a), (b), (d), and (g).

2. Section 416.537 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 416.537 Overpayments—defined.

(a) *Overpayments.* * * *

When a payment of more than the amount due is made by direct deposit to a financial institution to or on behalf of an individual who has died, and the financial institution credits the payment to a joint account of the deceased individual and another person who is the surviving spouse of the deceased individual and was eligible for a payment under title XVI of the Act (including any State supplementation payment paid by the Secretary) as an eligible spouse (or as either member of an eligible couple) for the month in which the deceased individual died, the amount of the payment in excess of the correct amount will be an overpayment to the surviving spouse.

* * * * *

[FR Doc. 90–4589 Filed 2–28–90; 8:45 am]

BILLING CODE 4190–11–M

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20 CFR Part 422

RIN 0960–AC56

Social Security Numbers for Newborn Children

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: In these regulations, we are amending our rules on applying for a Social Security number. Under these regulations, when a parent gives information to hospital personnel for the birth registration process of a State, including for this purpose, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and New York City, the parent will also be able to request a Social Security number for his or her newborn child. When a parent has requested a Social Security number for the child, the State vital statistics office will receive the request with the birth registration data from the hospital and then forward this information electronically to the Social Security Administration (SSA) where a Social Security number will be assigned and a card will be issued for the child. The vital statistics data that the State office receives from the hospital and forwards to SSA will serve as evidence of the age, identity, and U.S. citizenship of the newborn child for purposes of assigning a Social Security number to that child. Under these procedures, the parent will not be required to file a separate application for a Social Security number for the child.

EFFECTIVE DATE: These rules are effective March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–8471.

SUPPLEMENTARY INFORMATION: At the request of parents or guardians, the Secretary of Health and Human Services (the Secretary) is authorized under section 205(c)(2)(B)(i) of the Social Security Act (the Act) to take affirmative measures to ensure that Social Security account numbers are assigned to or on behalf of children who are below school age. This section of the Act also provides that the Secretary shall require applicants for Social Security numbers to furnish the evidence necessary to establish their age, U.S. citizenship or alien status, and true identity.

Our current regulations at 20 CFR 422.103 provide that an individual may apply for a Social Security number by filing a signed Form SS–5 "Application for a Social Security Card", and by submitting evidence of age, identity, and U.S. citizenship or alien status as described in § 422.107. Under these current regulations, a U.S. birth certificate is generally accepted as evidence of age, as evidence of identity for a child under 7 years of age (when there is no other evidence of identity,) and as evidence of U.S. citizenship. On February 14, 1989, we published proposed rules to implement a new policy under which we will assign a Social Security number to a newborn child, based on a parent's request, as part of a State's birth registration process.

After conducting several successful pilot projects, we invited the States,

including, for the purpose of this service, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and New York City, to enter into agreements with us to make this service available nationally. We now have agreements with more than 40 States and expect soon to have agreements with others. We do not, however, plan to extend this service to any other U.S. territories or possessions because of the relatively small number of births and requests for Social Security numbers in those places. In addition, they lack the electronic transfer capabilities. We are, therefore, amending our regulations to include this procedure as another means of applying for a Social Security number.

Under these regulations, the birth registration process of a State vital statistics office may be used to obtain a Social Security number card. A question is added to the birth registration form used by the hospital, asking the parent whether he or she wants to have a Social Security number card issued to the newborn child. If a number is requested by the child's parent, the appropriate State vital statistics office will electronically forward the request and the child's name, data and place of birth, sex, mother's maiden name, father's name (if shown on the birth registration), address of mother, and birth certificate number to SSA. We will then assign a Social Security number to the child and send the card to the child at the mother's address.

In this process of assigning a Social Security number to a newborn child, we will consider a checked box or other affirmative response by a parent as indicated on the birth registration form as a request for a Social Security number for the child. We will consider the information transmitted to us from the birth registration form by the State vital statistics office to be acceptable evidence of the child's age, identity, and U.S. citizenship because it contains the information we need to establish these factors.

As noted above, section 205(c)(2)(B)(i) of the Act provides that the Secretary is authorized to assign Social Security numbers to or on behalf of children who are below school age at the request of their parents or guardians. Although our regulations governing the issuance of a Social Security number state that every individual needing a number may apply by filing a signed Form SS–5, we are not requiring a signed SS–5 for a number in the case of parents who request a number for their newborn child as part of the State birth registration process. We are modifying our procedures for several reasons. First, most States require a parent's signature on the birth registration document. Additionally, when preparing the registration document, most hospitals will use a worksheet which includes the question on requesting a Social Security number and requires a parent's signature. We are working with States which do not require a signature on their registration document to prepare operating procedures and guidelines for all hospitals within their jurisdictions, including a facsimile of a worksheet which contains space for both the Social Security number question and a parent's signature, to ensure that a parent who requested a number for a newborn child did so affirmatively. We, therefore, believe that the procedures for assigning Social Security numbers to newborn children minimize the possibility that we will assign numbers in error.

We received comments on our proposed rules from six State agencies, one County agency, the Bureau of the Census, the Center for Immigration Studies, and one individual. The State agencies and the County agency expressed concern that parents who apply for Federal financial assistance for their newborn children are required by the Family Support Administration (FSA) to show either a Social Security number for a child or evidence of applying for a number. However, the process we have described in our regulations does not provide for giving parents evidence of applying for a number. Moreover, one State agency stated that receipt of a Social Security card under this new procedure could take as long as 3 months in some instances. Thus, to provide evidence of applying for a Social Security number, a parent would have to go through the process of filing a Form SS–5 for the child, even though a number was requested in the hospital. In response to these comments, we have revised the form "Message from Social Security" that is given to a parent who applied in the hospital for a Social Security number. The revised form provides space for a hospital official to certify that a number has been requested for the baby by entering the child's name, signing and dating the form. FSA has informed public assistance offices that the form is acceptable as proof of applying for a Social Security number.

The United States Department of Commerce, Bureau of the Census, urged that we obtain and record the race of the newborn child and its parents when the request for a Social Security number is made in the hospital. We realize that the Bureau uses race as a significant factor in much of the valuable statistical information it compiles. However, it is our understanding that States do not record the child's race in their vital statistics records and have no reason to do so. Further, we are informed that the information about the race of a child's parents in the birth records of States is confidential and cannot be disclosed in any way so as to identify the individual. Our current Form SS–5 "Application for a Social Security Card" has a space for race, but completion of that item is optional and when completed is unchallenged. Moreover, the race entry is not an essential item of identification for a Social Security number in view of the other identifying information we obtain. Therefore, we do not plan to make "race" a required item of information in the process of applying for a Social Security number for a newbord child.

The Center for Immigration Studies recommended that, because of the Social Security number card's increasing use as an identification document, we introduce biometric identifiers, such as fingerprints and footprints. Under our current procedure in which the State electronically transfers the birth registration data to us, there would be no practical way for us to obtain biometric identifiers, even if the State's vital statistics records contained the identifiers, which they do not. Moreover, we have no reason to question the integrity and security of the present system.

The Center for Immigration Studies also suggested that the State vital statistics office notify us of the death of a child who had been issued a Social Security number based on a birth registration request. At present, we routinely receive death information from States, and it is recorded in the same file which shows that a Social Security number has been assigned under this enumeration at birth process.

One person suggested that a Social Security number be applied for only after a child has been discharged from the hospital. This person believes this would save needless paperwork for children who may die or suffer extended illnesses. To avoid such situations, we have requested that hospitals not ask the Social Security number question in cases where the baby is not expected to live, if the baby is to be placed for adoption, or if the baby is unnamed. We believe that these guidelines will help to meet the concerns expressed by this commenter and will also carry out the purpose of these regulations, which is to take advantage of the birth registration process in the States to obtain an

application for a Social Security number.

The final rules are the same as the proposed rules except that we have added the U.S. Virgin Islands as an entity with which we may enter into an agreement to assign Social Security numbers to newborn children.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the regulations do not meet any of the threshold criteria for a major rule. These changes are expected to save the Federal Government $11.4 million annually when fully implemented. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations, which affect the issuance of Social Security number cards to newborn children, will not have a significant economic impact on a substantial number of small entities, because they affect only the voluntary participation of parents, hospitals, and State vital statistics offices. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not needed.

Paperwork Reduction Act

These regulations impose no new reporting/recordkeeping requirements requiring the Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Freedom of Information, Organization and Functions (Government agencies), Social Security.

Dated: November 21, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: January 16, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart B of part 422 of 20 CFR chapter III is amended as follows:

PART 422—ORGANIZATIONS AND PROCEDURES

1. The authority citation for subpart B continues to read as follows:

Authority: Secs. 205 and 1102, Social Security Act (42 U.S.C. 405 and 1302).

2. Section 422.103 is amended by revising paragraphs (b) and (c), to read as follows:

§ 422.103 Social security numbers.

* * * * *

(b) *Applying for a number.* (1) *Form SS-5.* An individual needing a social security number may apply for one by filing a signed Form SS-5, "Application for a Social Security Card," at any social security office and submitting the required evidence. Upon request, the social security office may distribute a quantity of Form SS-5 applications to labor unions, employers, or other representative organizations. An individual outside the United States may apply for a social security number card at the Department of Veterans Affairs Regional Office, Manila, Philippines, at any U.S. foreign service post, or at a U.S. military post outside the United States. See § 422.106 for special procedures for filing applications with other government agencies. Form SS-5 may be obtained at:

(i) Any local social security office;

(ii) The Social Security Administration, 300 N. Greene Street, Baltimore, MD 21201;

(iii) Offices of District Directors of Internal Revenue;

(iv) U.S. Postal Service offices (except the main office in cities having a social security office);

(v) U.S. Employment Service offices in cities which do not have a social security office;

(vi) The Department of Veterans Affairs Regional Office, Manila, Philippines;

(vii) Any U.S. foreign service post; and

(viii) U.S. military posts outside the United States.

(2) *Birth Registration Document.* The Social Security Administration (SSA) may enter into an agreement with officials of a State, including, for this purpose, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and New York City, to establish, as part of the official birth registration process, a procedure to assist SSA is assigning social security numbers to newborn children. Where an agreement is in effect, a parent, as part of the official birth registration process, need not complete a Form SS-5 and may request that SSA assign a social security number of the newborn child.

(c) *How numbers are assigned.* (1) *Request on Form SS-5.* If the applicant has completed a Form SS-5, the social security office, the Department of Veterans Affairs Regional Office, Manila, Philippines, the U.S. foreign service post, or the U.S. military post outside the United States that receives the completed Form SS-5 will require the applicant to furnish documentary evidence, as necessary, to assist SSA in establishing the age, U.S. citizenship or alien status, true identity, and previously assigned social security number(s), if any, of the applicant. A personal interview may be required of the applicant. See § 422.107 for evidence requirements. After review of the documentary evidence, the completed Form SS-5 is forwarded, or data from the SS-5 is transmitted, to SSA's central office in Baltimore, Md., where the data are electronically screened against SSA's files. If the applicant requests evidence to show that he or she has filed an application for a social security number card, a receipt or equivalent document may be furnished. If the electronic screening or other investigation does not disclose a previously assigned number, SSA's central office assigns a number and issues a social security number card. If investigation discloses a previously assigned number for the applicant, a duplicate social security number card is issued.

(2) *Request on birth registration document.* Where a parent has requested a social security number for a newborn child as part of an official birth registration process described in paragraph (b)(2) of this section, the State vital statistics office will electronically transmit the request to SSA's central office in Baltimore Md., along with the child name, date and place of birth, sex, mother's maiden name, father's name (if shown on the birth registration), address of the mother, and birth certificate number. This birth registration information received by SSA from the State vital statistics office will be used to establish the age, identity, and U.S. citizenship of the newborn child. Using this information, SSA will assign a number to the child and send the social security number card to the child at the mother's address.

* * * * *

[FR Doc. 90-4590 Filed 2-28-90; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 14

Standing Advisory Committees; Editorial Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending certain of its regulations on standing advisory committees to make editorial revisions to improve the accuracy of the regulations.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: T. Rada Proehl, Office of Regulatory Affairs (HFC–222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: FDA is amending certain of its regulations on standing advisory committees to improve the accuracy of the regulations.

21 CFR 14.100(b)(2)(ii) is amended to conform the function statement to the language used in the other function statements in 21 CFR Part 14. Section 14.100(c)(2)(ii) is amended to include in the function of the Anti-Infective Drugs Advisory Committee the review and evaluation of ophthalmic disorders. Section 14.100(c)(11)(i) is amended to correct the effective date of chartering. Section 14.100(d)(2)(i) is amended by updating the date of chartering from August 12, 1976, to May 17, 1987. Further, the function statement in § 14.100(e)(2) is amended to reflect the withdrawal of the involvement of the Environmental Protection Agency in FDA's research program conducted at the National Center for Toxicological Research.

The amendments in 21 CFR part 14 are wholly editorial in nature. For this reason, FDA finds for good cause that notice and public procedure are unnecessary (5 U.S.C. 553 (b)(B) and (d)).

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Freedom of Information Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: Secs. 201–902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–392); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b–263n, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. App. 2; 28 U.S.C. 2112.

2. Section 14.100 is amended by removing the last sentence in paragraph (b)(2)(ii), by revising paragraph (c)(2)(ii), by removing "September 21, 1978" in paragraph (c)(11)(i) and replacing it with "September 1, 1978", by removing "August 12, 1976" in paragraph (d)(2)(i) and replacing it with "May 17, 1987", and by revising paragraph (e)(2) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(c) * * *

(2) * * *

(ii) *Function:* Reviews and evaluates data relating to the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders.

* * * * *

(e) * * *

(2) *Function:* Advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs to fulfill regulatory responsibilities.

* * * * *

Dated: February 21, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–4721 Filed 2–28–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8289]

RIN 1545–AO48

General Rule for Taxable Year of Inclusion; Election To Include Crop Insurance Proceeds in Gross Income in the Taxable Year Following the Taxable Year of Destruction or Damage

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations clarifying the applicability of section 451(d) of the Internal Revenue Code (regarding the taxable year of inclusion for crop insurance proceeds) to certain federal payments made to farmers. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the proposed rules section of this issue of the **Federal Register.**

EFFECTIVE DATES: The temporary regulations contained in § 1.451–6T are effective for payments received after December 31, 1973.

SUPPLEMENTARY INFORMATION:

Issuance of Proposed Regulation

The rules contained in this document are also being issued as proposed regulations by the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register.**

Background

This document contains temporary Income Tax Regulations (26 CFR part 1) that provide rules relating to the applicability of section 451(d) of the Internal Revenue Code to certain federal payments. Section 451(d) of the Code was enacted as part of the Tax Reform Act of 1969 to ameliorate the tax burden on a farmer who, in the same year, would otherwise have to pay tax on both: (a) The proceeds of crops grown during the previous year and sold during the current year and (b) the insurance proceeds received during the current year with respect to the destruction of, or damage to, crops that would have been sold the following year. Prior to the Tax Reform Act of 1969, crop insurance proceeds were included in income for the year of receipt in the case of taxpayers using a cash method of accounting. Congress recognized that such a rule resulted in a hardship where it was the normal practice of the farmer to sell a crop in the year following that in which the crop was raised. In that case the farmer normally would include the proceeds from the sale of the prior year's crop in income for the taxable year of sale and would include the proceeds from the sale of the current year's crop in income for the following year when the crop was sold. If, however, the current year's crop was damaged or destroyed (for instance by hail or windstorm), the farmer was required to include any insurance proceeds in income for the current year. Thus, two years of income had to be reported in the current year as a result of an occurrence over which the farmer had no control. Congress was of the view that the likely net operating loss in the subsequent year that could be carried back was not an adequate solution to the problem.

Payments made by the Federal Government with respect to the destruction of or damage to crops

caused by natural disaster serve the identical function of insurance proceeds received for similar purposes, and have the same tax effects on the recipient. Although Congress has specifically enumerated certain disaster relief payments that qualify as "insurance proceeds" (see *e.g.*, Pub. L. 94–455, sections 2102 (a), (b), 1906(b)(13)(A); Pub. L. 100–647, section (a)), the Service believes that the interpretation set forth in the temporary regulations properly implements the intent with which section 451(d) was initially enacted. This determination is not intended to affect the meaning of the term "insurance" for purposes of any other provision of the Code.

Rev. Rul. 75–36, 1975–1 C.B. 143, which took a position inconsistent with that of the temporary regulations, will be revoked.

Explanation of Provisions

Under the regulations, federal payments received as a result of: (a) Destruction or damage to crops caused by drought, flood, or any other natural disaster or (b) the inability to plant crops because of such a natural disaster, shall be treated as insurance proceeds received as a result of destruction or damage to crops for purposes of section 451(d) of the Code.

Special Analyses

It has been determined that these temporary rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is P. Val Strehlow of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these temporary regulations, on matters of both substance and style.

List of Subjects in 26 CFR Parts 1.441–1 Through 1.483–2

Accounting, Deferred compensation plans, Income taxes.

Amendments to the Regulations

The amendments to 26 CFR part 1, are as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority for part 1 continues to read in part:

Authority: U.S.C. 7805 * * *

Par. 2. New § 1.451–6T is added to read as follows:

§ 1.451–6T Election to include crop insurance proceeds in gross income in the taxable year following the taxable year of destruction or damage (Temporary).

(a) *In general.* (1) For taxable years ending after December 30, 1969, a taxpayer reporting gross income on the cash receipts and disbursements method of accounting may elect to include insurance proceeds received as a result of the destruction of, or damage to, crops in gross income for the taxable year following the taxable year of such destruction or damage, if the taxpayer establishes that, under the taxpayer's normal business practice, the income from such crops would have been included in gross income for any taxable year following the taxable year of such destruction or damage. However, if the taxpayer receives such insurance proceeds in the taxable year following the taxable year of such destruction or damage, then the taxpayer shall include such proceeds in gross income for the taxable year or receipt without having to make an election under section 451(d) and this section. For the purposes of this section only, federal payments received as a result of

(i) Destruction or damage to crops caused by drought, floods, or any other natural disaster, or

(ii) The inability to plant crops because of such a natural disaster, shall be treated as insurance proceeds received as a result of destruction or damage to crops. The preceding sentence shall apply to payments which are received by the taxpayer after December 31, 1973.

(2) For special rules pertaining to the destruction of, or damage to, two or more specific crops, see § 1.451–6 (a) (2).

(b)(1) *Time and manner of making election.* For rules pertaining to the time and manner of making the election under section 451(d) and this section, see § 1.451–6 (b) (1).

(2) *Scope of election.* For specific rules pertaining to the scope of an election under section 451(d) and this section, see § 1.451–6(b)(2).

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: February 15, 1990.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–4601 Filed 2–23–90 4:28 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, and 206

Oil and Gas Product Valuation Regulations; Training Seminars

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of training seminars.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it will conduct training seminars at the locations and on the dates identified below, on the oil and gas product valuation regulations that were published in the **Federal Register** on January 15, 1988 (53 FR 1184 and 53 FR 1230, respectively). The seminars will specifically discuss transportation and processing allowances and the reporting problems encountered since the regulations became effective March 1, 1988.

DATES: See Supplementary Information.

ADDRESSES: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. James P. Morris, Chief, Allowance Accounting Section, Transportation and Processing Valuation Branch, Royalty Valuation and Standards Division, (303) 231–3729 or (FTS) 326–3729, or Mr. Stanley J. Brown, Chief, Transportation and Processing Valuation Branch, Royalty Valuation and Standards Division, (303) 231–3063 or (FTS) 326–3063.

SUPPLEMENTARY INFORMATION: The oil and gas product valuation regulations that were published in the **Federal Register** on January 15, 1988, amended and clarified existing regulations governing the valuation of oil and gas for royalty computation purposes. The regulations govern the methods by which value is determined when computing oil and gas royalties under Federal (onshore or Outer Continental Self) and Indian (tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

The training seminars will include discussions on the following topics:

- The mission, objectives, and functions of the Transportation and Processing Valuation Branch.
- An overview of the regulations.
- The reporting problems encountered.
- Systems development and billing procedures.
- Information collection requirements and reporting forms (Form MMS–4109, "Request for Gas Plant Processing Deduction;" Form MMS–4110, "Oil Transportation Allowance Report;" and Form MMS–4295 "Gas Transportation Allowance Report") required to support oil and gas transportation and processing allowance deductions from royalties due. Assistance will be provided on how to properly complete the forms.

Location and Dates

The seminars will be held from 8:30 a.m. to 4 p.m. each day on the dates and at the locations shown below:

Dates	Locations
March 28, 1990	Sheraton Hotel and Conference Center, 360 Union Boulevard, Lakewood, Colorado 80228, (303) 987–2000.
April 4, 1990	Stouffer Dallas Hotel, 2222 Stemmons Freeway, Dallas, Texas 75207, (214) 631–2222.
April 11, 1990	Houston Airport Marriott, 18700 John F. Kennedy Boulevard, Houston, Texas 77031, (713) 443–2310.
April 18, 1990	Sheraton Inn Tulsa Airport, 2201 North 77th East Avenue, Tulsa, Oklahoma 74115, (918) 835–9911.

Reservations

Persons interested in attending one of these seminars should make a reservation with our office by telephone on or before March 21, 1990, to Ms. LuCinda Rood at (303) 231–3396 or (FTS) 326–3396.

Telephone reservations should be confirmed in writing to Ms. LuCinda Rood, Minerals Management Service, Royalty Valuation and Standards Division, P.O. Box 25165, MS 653, Denver, Colorado 80225.

Persons requesting reservations should specify the seminar location that they are interested in attending and the number of attendees. Due to space limitations the number of attendees may be limited at each seminar location. Reservations will be provided on a first-come-first-served basis.

If insufficient interest is shown in attending any of the individual training sessions, such sessions may be cancelled and alternate arrangements will be made for those who expressed interest.

Dated: February 23, 1990.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 90–4631 Filed 2–28–90; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL 3728–1]

Texas; Final Authorization of State Hazardous Waste Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule on application of Texas for program revision.

SUMMARY: The State of Texas has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Environmental Protection Agency (EPA) has reviewed the Texas application and has reached a final determination that the Texas hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is approving the Texas hazardous waste program revisions.

EFFECTIVE DATE: Final authorization of the Texas hazardous waste program revisions shall be effective at 1:00 p.m. on March 15, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Prince, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655–6760.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified, or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266 and 124 and 270.

B. Texas

The State of Texas initially received final authorization in a notice published on December 12, 1984, and effective December 26, 1984. Texas received authorization for revisions to its program in notices published in the **Federal Register** on March 26, 1985; October 4, 1985; January 31, 1986; and, December 18, 1986. On November 12, 1987, Texas submitted a program revision application for additional program approvals. Texas seeks approval of its program revisions in accordance with § 271.21(b)(4).

EPA reviewed the Texas application and made a tentative determination, subject to public review and comment, and a legislative change which allows Texas to implement the permitting portion of its program, that the Texas hazardous waste program revision satisfied all of the requirements necessary to qualify for final authorization. Consequently, EPA made the tentative determination to grant Texas final authorization for the additional program modifications once the EPA concerns were satisfactorily addressed by the State. That decision was published in the **Federal Register** as a proposed rule on February 3, 1989 (see 54 FR 5500).

Federal regulations require that EPA approve or disapprove RCRA State program revisions based on the requirements of 40 CFR part 271 (40 CFR 271.21(b)(2)). One of these requirements, § 271.14, concerns permitting. All State RCRA programs must have legal authority to implement the conditions in § 270.32 (40 CFR 271.14(k)). Section 270.32(b)(1) states that each RCRA permit shall include conditions necessary to achieve compliance with the regulations including the applicable requirements of the regulations (40 CFR 271.32(b)(1)). For a State-issued permit, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit (40 CFR 270.32(c)).

Texas regulations are equivalent to these regulations. They require that any statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit application shall be included in the permit (31 TAC § 305.127(4)(b)). However, in July 1987, Article 7 of the Texas Department of Commerce Act (Tex. Rev. Civ. Stat. Ann. art. 4413 (301) 7.003(a) (Vernon Supp. 1988)) was passed and it required that State

agencies use solely those regulations in effect at the time of permit filing when processing a permit. Because statutory authority prevails over regulatory authority, *State v. Jackson*, 376 S.W.2d 341 (1964), the provisions of 31 TAC 305.127(4)(b) may have been considered to be legislatively preempted. Therefore, Texas did not have equivalent regulations for 40 CFR 270.32, nor did Texas have the authority to carry out the conditions in 40 CFR 270.32, as required by 40 CFR 271.14.

The Texas Legislature amended the Texas Department of Commerce Act with House Bill 391 on May 17, 1989, with the following language: "This section does not apply to permits or orders issued under programs for which a State regulatory agency has received authorization, delegation, or approval from the federal government to implement an equivalent State program in lieu of or as part of the federal program." The bill was effective on September 1, 1989. When the legislative amendment became effective, Texas' program satisfied all the requirements necessary for final authorization.

In the proposed rule that was published in the **Federal Register** on February 3, 1989, EPA announced the availability of the Texas revision application for public review and comment and the date of a public hearing on the application. The public hearing was held on February 28, 1989, at 7 p.m. in Austin, Texas.

During the hearing, only one public comment on the application was made. The commentator offered support for delegation of the program to Texas due to their better capacity to conduct a permitting and enforcement program by beign closer to the regulated community and having those State resources behind them. However, concern was expressed about the permitting language in the Department of Commerce Act. Additional concern addressed the Memorandum of Understanding (MOU) between the Texas Water Commission and the Texas Railroad Commission regarding the authority of each agency over oil and gas waste. The commentator felt that the MOU is not specific enough concerning each agency's inspection and enforcement authority in particular cases.

These concerns were also provided in a letter sent to EPA. EPA's response included the status of the amendment to the Texas Department of Commerce Act and the Agency's belief that the MOU addresses all of EPA's requirements for inclusion in that document. The commentator was assured that the MOU could be amended, as necessary, at a later date.

The Texas program revisions adopt changes in the Federal RCRA program through the July 14, 1986, publication of the **Federal Register**. The revisions are in 31 TAC Chapters 281, 301, 305, 335, and 337. These revisions not only include all the requirements for Texas to maintain a program which is equivalent to the Federal RCRA program, but they also include regulations added to the Federal program pursuant to HSWA and promulgated by EPA through July 14, 1986. These State regulations which deal with the subject matter of the Federal HSWA program are not considered at this time as part of the Federally authorized program in Texas, and EPA will retain its responsibilities to enforce HSWA provisions in Texas. The State of Texas has submitted a separate application for approval of these State regulations which deal with the Federal HSWA program pursuant to 40 CFR 271.21(e)(2)(iii), and EPA anticipates action on this application in the near future.

In addition, the Texas provision incorporating the Federal HSWA provisions concerning research, development, and demonstration permits is not being considered by EPA for authorization at this time. Texas has not applied, nor is it required at this time to apply pursuant to 40 CFR 271.21(e)(2)(iii), for authorization of these Federal HSWA requirements. Therefore, Subchapter K of 31 Texas Administrative Code chapter 305 (as amended July 14, 1987) is not being considered as part of the authorized State program.

The following chart lists the State rules that have been changed and that are being recognized as equivalent to the analogous Federal rules, as they have been changed.

Federal Citation	State Analog
1. Exclusion of Household Waste as a Hazardous Waste—changes in 40 CFR Part 261, Subpart A—as published in the FEDERAL REGISTER on November 13, 1984.	1. 31 Texas Administrative Code (TAC) § 335.1, revised July 14, 1987.
2. Applicability of Interim Status Standards to Owners and Operators of Treatment, Storage and Disposal Facilities—changes to 40 CFR Part 265, Subpart A—as published in the FEDERAL REGISTER on November 21, 1984.	2. 31 TAC § 335.111, revised July 14, 1987.
3. Corrections to the Test Methods Manual—changes to 40 CFR Part 260, Subparts B and C and 270, Subpart A—as published in the FEDERAL REGISTER on December 4, 1984.	3. 31 TAC § 335.125(d) and 335.175(c), revised July 14, 1987.
4. Interim Status Standards for Landfills—changes to 40 CFR Part 265, Subparts K, M, and N—as published in the FEDERAL REGISTER on April 23, 1985.	4. 31 TAC § 335.112(a)(10) and (13); 335.121(a); and 335.126(a), revised July 14, 1987.
5. Financial Responsibility—Settlement Agreement—changes to 40 CFR Part 260, Subpart B; 264, Subparts G and H; 265, Subparts G and H; and 270, Subparts B, D, and G—as published in the FEDERAL REGISTER on May 2, 1986.	5. 31 TAC § 335.1; 335.152(a)(5) and (6); 335.178; 335.112(a)(6) and (7); 335.127; 305.50(4); 305.51; 305.62(c)(2)(C)(x) and 305.64(g), revised July 14, 1987.
6. Listing of Spent Pickle Liquor—changes to 40 CFR Part 261, Subpart D—as published in the FEDERAL REGISTER on May 28, 1986.	6. 31 TAC § 335.1, revised July 14, 1987.
7. Radioactive Mixed Waste—as published in the FEDERAL REGISTER on July 3, 1986	7. 31 TAC § 335.1, revised July 14, 1987.

The State also submitted revisions to the Program Description, Attorney General's Statement and the Memorandum of Agreement between the State of Texas and EPA, Region 6. Three executed Memoranda of Understanding (MOUs) were also submitted. The first MOU is between the Texas Railroad Commission, TWC and the Texas Department of Health (TDH). That document addresses the jurisdictional division among the agencies over wastes that result from activities associated with the exploration, development, and production of oil or gas. The second MOU between TWC and TDH concerned the regulation and management of radioactive mixed wastes. The third MOU between TWC and the Attorney General of Texas concerned public participation in the State hazardous waste enforcement process.

The State of Texas is not seeking authority over activities on Indian lands.

C. Decision

After reviewing the public comments and re-evaluating the State's submittal in light of the comments, it is my conclusion that the Texas revision application now meets all of the

regulatory and statutory requirements established by RCRA. Accordingly, Texas is granted final authorization to operate its revised hazardous waste management program.

D. Codification in Part 272

EPA will use part 272 for codification of the decision to authorize the Texas program and for incorporation by reference of those provisions of the Texas statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is proposing to amend part 272, subpart SS. A separate notice is being published today for the proposed codification.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization does not create any new requirements but simply approves requirements which are already State law. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: October 18, 1989.

Robert E. Layton, Jr., P.E.,

Regional Administrator.

[FR Doc. 90-4682 Filed 2-28-90; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL 3728-4]

Illinois; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Illinois has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "Act"). The Environmental Protection Agency (EPA) has reviewed Illinois' application and has reached a decision, subject to public review and comment, that Illinois' hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to Illinois to operate its expanded program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984, hereinafter "HSWA").

EFFECTIVE DATES: Final authorization for Illinois' program revision shall be effective April 30, 1990 unless EPA publishes a prior **Federal Register** (FR) action withdrawing this immediate final rule. All comments on Illinois' program revision application must be received by 4:30 p.m. central time on April 2, 1990.

ADDRESSES: Copies of Illinois' final authorization applications are available from 9 a.m. to 4 p.m., at the following addresses for inspection and copying: Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706, contact: Tom Kavanagh, (217) 785-0551; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, phone (202) 382-5962; U.S. EPA, Region V, 230 S. Dearborn, Chicago, Illinois 60604, contact: Gary Westefer, (312) 886-7450. Written comments should be sent to Mr. Gary Westefer, Illinois Regulatory Specialist, U.S. EPA, Office of RCRA, 5HR-JCK-13, 230 S. Dearborn, Chicago, Illinois 60604, phone (312) 886-7450.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Illinois Regulatory Specialist, U.S. Environmental Protection Agency, Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, 5HR-JCK-13, 230 South Dearborn, Chicago, Illinois 60604, (312) 886-7450, FTS 8 886-7450.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. For further explanation see section C of this notice

In accordance with 40 CFR 271.21(a), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessary because of changes to EPA's regulations in 40 CFR parts 124, 260-268, and 270.

B. Illinois

Illinois initially received final authorization for its base program (51 FR 3778, January 30, 1986) effective on January 31, 1986. Illinois received authorization for revisions to its program effective on March 5, 1988 (53 FR 126, January 5, 1988). On November 30, 1988, Illinois submitted an additional revision application. EPA has reviewed this application and has made an immediate final decision, subject to public review and comment, that Illinois' hazardous waste program revisions do reflect the State's equivalency with the Federal program and satisfy all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Illinois for its additional program revisions.

On the effective date of final authorization, Illinois will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program.

Federal requirement	Analogous state authority
Delisting, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 720.122, Effective August 22, 1986.
Household Waste, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 721.104, Effective August 22, 1986.
Waste Minimization, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 702.150; 703.153; 722.141; Part 722 Appendix, 724.170; 724.173, Effective August 22, 1986.
Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 724.118; 725.118, Effective August 22, 1986.
Liquids in Landfills, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 703.207; 724.414; 725.414, Effective August 22, 1986.
Dust Supression, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 726.123, Effective August 22, 1986.

Federal requirement	Analogous state authority
Double Liners, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 724.321; 724.401; 725.321; 725.354; 725.401, Effective August 22, 1986.
Groundwater Monitoring, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 724.190; 724.326; 724.328; 724.403; 724.410; 725.354, Effective August 22, 1986.
Cement Kilns, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 721.106; 721.133; 726.131, Effective August 22, 1986.
Fuel Labeling, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 726.134, Effective August 22, 1986.
Corrective Action, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 703.141; 724.190; 724.201, Effective August 22, 1986.
Pre-Construction Ban, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 703.151, Effective August 22, 1986.
Permit Life, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 702.161; 702.184, Effective August 22, 1986.
Omnibus Provision, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 702.160; 703.241, Effective August 22, 1986.
Interim Status, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 702.120; 702.122; 702.150; 703.150; 703.153; 703.157, Effective August 22, 1986.
Research and Development Permits, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 702.120; 703.231, Effective August 22, 1986.
Hazardous Waste Exports, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 722.150, Effective August 22, 1986.
Exposure Information, July 15, 1985, 50 FR 28702-28755*.	Rule 35 IAC 702.122; 703.166, Effective August 22, 1986.
Listing of TDI, DNT and TDA Wastes, October 23, 1985, 50 FR 42936-42943*.	Rule 35 IAC 721.132; 721.133, Part 721, Appendices C, G, and H, Effective August 22, 1986.
Burning of Waste Fuel and Used Oil Fuel, November 29, 1985,* 50 FR 41964-49211, Amended on November 19, 1986, 51 FR 41900-41904, and April 13, 1987, 52 FR 11819-11822*.	Rule 35 IAC 721.103; 721.105; 721.106; 724.440; 725.440; 726.130; 726.131; 726.132; 726.133; 726.134; 726.135; 726.140; 726.141; 726.142, 726.143; 726.144; Part 721, Appendix C, G, H, Effective August 22, 1986, January 29, 1988.
Listing of Spent Solvents, December 31, 1985, 50 FR 53315-53320*.	Rule 35 IAC 721.131; Effective August 22, 1986.
Listing of EDB Wastes, February 13, 1986, 51 FR 5330*.	Rule 35 IAC 721.132; Part 721,, Appendix C, G, Effective December 12, 1986.
Listing of Four Spent Solvents, February 25, 1986, 51 FR 6541*.	Rule 35 IAC 721.131; 721.133; Part 721, Appendix C, G, H, Effective December 12, 1986.
Generators of 100 to 1000 kg. Hazardous Waste, March 24, 1986, 51 FR 10174-10176*.	Rule 35 IAC 703.123; 703.150; 720.110; 721.101; 721.105; 721.133; 722.120; 722.134; 722.144; 723.120, Effective December 12, 1986.
Financial Responsibility: Settlement Agreement, May 2, 1986, 51 FR 16443-16459.	Rule 35 IAC 702.187; 703.155; 703.183; 720.110; 724.210; 724.211; 724.212; 724.213; 724.214; 724.215; 724.216; 724.217; 724.218; 724.219; 724.220; 724.241; 724.242; 724.243; 724.244; 724.245; 724.251; 725.210; 725.211; 725.212; 725.213; 725.214; 725.215; 725.216; 725.217; 725.218; 725.219; 725.220; 725.240; 725.241; 725.242; 725.243; 725.244; 725.245; 725.247, Effective April 3, 1987.
Codification Rule, Technical Correction, May 28, 1986, 51 FR 19176-19177*.	Rule 35 IAC 725.414, Effective April 3, 1987.
Listing of Spent Pickle Liquor, May 28, 1986, 51 FR 19320-19322 as amended September 22, 1986, 51 FR 33612.	Rule 35 IAC 721.132, Effective April 3, 1987.
Radioactive Mixed Wastes, July 3, 1986, 51 FR 24504.	Illinois Revised Statute, Chapter 111 1/2, pars. 1003.53, 1020(a), (b), 1022.4, May 26, 1988.
Standards for Hazardous Waste Storage and Treatment Tank Systems, July 14, 1986, 51 FR 25470-25486*.	Rule 35 IAC 703.155; 703.183; 703.202; 720.110; 721.104; 722.134; 724.115; 724.173; 724.210; 724.240; 724.290; 724.291; 724.292; 724.293; 724.294; 724.295; 724.296; 724.297; 724.298; 724.299; 725.113; 725.115; 725.173; 725.210; 725.240; 725.290; 725.291; 725.292; 725.293; 725.294; 725.295; 725.296; 725.297; 725.298; 725.299; 725.300; 725.301, Effective August 14, 1987.
Biennial Report Correction, August 8, 1986, 51 FR 28556*.	Rule 35 IAC 724.175; 725.175, Effective August 14, 1987.
Exports of Hazardous Waste, August 8, 1986, 51 FR 28664-28686*.	Rule 35 IAC 721.105; 721.106; 722.141; 722.150; 722.151; 722.152; 722.153; 722.154; 722.155; 722.156; 722.157; 722.160; 722.170; 723.120, Effective August 14, 1987.

*Indicates HSWA Provision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on January 31, 1986, and on March 5, 1988, the effective dates of Illinois' final authorizations for the RCRA base program and for the RCRA Cluster I revision.

The public may submit written comments on EPA's immediate final decision until April 2, 1990. Copies of Illinois' application for this program revision are available for inspection at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Illinois' program revisions shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Illinois is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Effect of HSWA on Illinois' Authorization

Prior to the Hazardous and Solid Waste Amendments to RCRA, a State with final authorization administered its hazardous waste program instead of, or entirely in lieu of, the Federal program. Except for enforcement provisions not applicable here, EPA no longer directly applied the Federal requirements in the authorized State and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to obtain equivalent authority within specified time frames. New Federal requirements usually did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new HSWA requirements and prohibitions take effect in authorized States at the same time they take effect in non-authorized States. EPA carries out those requirements and prohibitions

directly in authorized and non-authorized States, including the issuance of full or partial HSWA permits, until EPA grants the State authorization to do so. States must still, at one point, adopt HSWA-related provisions as State law to retain final authorization. In the interim, the HSWA provisions apply in authorized States.

As a result of the HSWA, there is a dual State/Federal regulatory program in Illinois. To the extent HSWA does not affect the authorized State program, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those HSWA requirements in Illinois until the State is authorized for them. Among other things, this will entail the issuance of Federal RCRA permits for those HSWA requirements for which the State is not yet authorized, in addition to the State permits. Any State requirement that EPA has reviewed, approved, and determined to be more stringent than HSWA provisions also remain in effect; thus the universe of the more stringent provisions in HSWA and the approved State program defines the applicable subtitle C requirements in Illinois.

Once EPA authorizes Illinois to carry out a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision or prohibition. Until that time, the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's rulemaking includes authorization of Illinois' program for several requirements implementing the HSWA. Those requirements implementing the HSWA are specified in the "Illinois" section of this notice. Any effective State requirement that is more stringent or broader in scope than a Federal HSWA provision will continue to remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

EPA published a FR notice that explains in detail the HSWA and its affect on authorized States (50 FR 28702–28755, July 15, 1985).

D. Decision

I conclude that Illinois' program revision application meets all the statutory and regulatory requirements established by RCRA and its amendments. Accordingly, EPA grants Illinois final authorization to operate its hazardous waste program as revised. Illinois now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program and its amendments. This responsibility is subject to the limitations of its program revision applications and previously approved authorities. Illinois also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

E. Codification

EPA codifies authorized State programs in part 272 of 40 CFR. The purpose of codification is to provide notice to the public of the scope of the authorized program in each State. Codification of the Illinois program will be completed at a later date.

Compliance with Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Illinois' program thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act: Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926 and 6974(b)).

Dated: January 26, 1990.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 90–4681 Filed 2–28–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 799

[OPTS–40019; FRL 3668–4]

Technical Amendments to Test Rules and Consent Orders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to 40 CFR 790.55 and 790.68, EPA has approved by letter certain modifications to test standards and schedules for chemical testing programs under section 4 of the Toxic Substances Control Act (TSCA). These modifications, requested by test sponsors, will be incorporated and codified in the respective test regulation or consent order. Because these modifications do not significantly alter the scope of a test or significantly change the schedule for its completion, EPA approved these requests without seeking notice and comment. EPA will annually publish a notice describing all of the modifications granted by letter for the previous year. This is the second such annual notice.

EFFECTIVE DATE: This rule is effective on March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA issued an interim final rule published in the **Federal Register** of September 1, 1989 (54 FR 36311), amending procedures for modifying test standards and schedules for test rules and testing consent orders under section 4 of TSCA. The amended procedures allow EPA to approve requested modifications which do not alter the scope of a test or significantly change the schedule for its completion. These modifications are approved by letter without public comment. The rule also requires immediate placement of these letters in EPA's public files and publication of these modifications in the **Federal Register.** This document includes modifications approved from October 1, 1988, through September 30, 1989. For a detailed description of the rationale for these modifications, refer to the submitters' letters and EPA's responses in the public record for this rulemaking.

I. Discussion of Modifications

Each chemical discussed in this rule is identified by a specific CAS number and docket number. Copies of

correspondence relating to specific chemical modifications may be found in docket number (OPTS–40019) or the chemical-specific docket established for this rule. The following table lists all chemical-specific modifications approved from October 1, 1988, through September 30, 1989.

MODIFICATIONS TO TEST STANDARDS AND CONSENT ORDERS OCTOBER 1, 1988 THROUGH SEPTEMBER 30, 1989

Chemical/CAS No.	Chemical FR Cite	Test	Modifications	Docket No. (OPTS)
Final Rule Chemicals:				
Anthraquinone (84–65–1)	799.500	Oyster Bioconcentration	5	40019/42076C
		Bluegill Acute Toxicity	1,5	
		Daphnia Acute Toxicity	5	
		Oyster Acute Toxicity	5	
Biphenyl (92–52–4)	799.925	Oyster Shell Deposition	5	40019/42031E
Bis(2-chloroethoxy) methane (111–91–1)	799.5055	Rat Subchronic Toxicity	1,4,5	40019/42088G
Commercial Hexane (110–54–3; 96–37–7)	799.2155	In Vitro Cytogenetics	2,5	40019/42084I
		Mammalian Cells in Culture	2	
Cumene (98–82–8)	799.1285	Environmental Effects	5	40019/42074B
		Aerobic Biodegradation	5	
		Trout Acute Toxicity	3	
Dibromomethane (74–95–3)	799.5055	Hydrolysis	5	40019/42088G
1,2-Dichlorobenzene (95–50–1)	799.5055	Hydrolysis	5	40019/42088G
1,2-Dichloropropane (78–87–5)	799.1550	Mysid Chronic Toxicity	5	40019/42043E
		Reproductive Toxicity	1	
1,3-Dichloropropanol (94–58–6)	799.5055	Soil Absorption	5,7	40019/42088G
		Rat Subchronic Toxicity	5	
Diethylene glycol butyl ether (112–34–5)	799.1560	Neurotoxicity	5	40019/42085E
Diethylenetriamine (111–40–0)	799.1575	Chemical Fate	1,2,3,5	40019/42012H
		Dermal Absorption	5	
Dihydrosafrole (94–58–6)	799.5055	Hydrolysis	5	40019/42088G
Ethyl methacrylate (97–63–2)	799.5055	Hydrolysis	5	40019/42088G
Malononitrile (109–77–3)	799.5055	Rat Subchronic Toxicity	5	40019/42088G
2-Mercaptobenzothiazole (149–30–4)	799.2475	All Required Tests	2	40019/42073B
		Trout Chronic Toxicity	3,6,7	
		Neurotoxicity	5	
Methanethiol (74–93–1)	799.5055	Soil Sorption	5	40019/42086G
Methyl chloride (75–87–3)	799.5055	Hydrolysis	5	40019/42068G
1,2,4,5-Tetrachlorobenzene (95–94–3)	799.5055	Hydrolysis	5	40019/42088G
1,2,3-Trichlorobenzene (108–90–7)	799.1053	Gammarus Acute Toxicity	5	40019/42050E
Consent Order Chemicals:				
3,4-Dichlorobenzotrifluoride (328–84–7)	799.5000	Acute Gammarid Toxicity	5	40019/42089B
Diisodecyl phenyl phosphite (25550–98–5)	799.5000	Neurotoxicity	2	40019/42101B
Methyl tertiary butyl ether (1634–04–4)	799.5000	Pharmacokinetics	1,3	40019/42098C

Modifications:
[1] Modify sampling schedule
[2] Change in test substance (form/purity)
[3] Change in non-critical test procedure or condition
[4] Add satellite group for further testing
[5] Extend test deadline by six months or less
[6] Add specific guideline requirement
[7] Alternate specific guideline requirement approved for certain test(s).

II. Public Record

EPA has established a public record for this rulemaking (docket number OPTS–40019). The record includes the information considered by EPA in evaluating the requested modifications.

The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. G–004, NE Mall, 401 M St., SW., Washington, DC 20460.

III. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule, listing modifications of test standards and schedules for tests required under test rules and testing consent agreements under the authority of section 4 of TSCA, is not major because it does not meet any of the criteria set forth in section 1(b) of the Order.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., Pub. L. 96–354, September 19, 1980), EPA is certifying that this rule will not have a significant impact on a substantial number of small businesses because the modifications listed in this rule have been made to expedite the development of test data and to reduce certain paperwork burdens associated with current regulations.

C. Paperwork Reduction Act

The information collection requirements associated with this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2070–0033.

EPA has determined that this rule does not change existing recordkeeping or reporting requirements nor does it impose any additional recordkeeping or reporting requirements on the public.

Send comments regarding this rule to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of

Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Testing.

Dated: February 17, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. In § 799.500, by redesignating paragraph (d), "Effective date", as paragraph (e), and by revising paragraphs (c)(2)(i)(A), (c)(2)(ii)(A), (c)(3)(ii)(A), (c)(5)(ii)(A), and newly designated paragraph (e), and by adding paragraph (c)(2)(i)(B)(*4*) to read as follows:

§ 799.500 Anthraquinone.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) Fish acute toxicity tests shall be conducted with Anthraquinone using chinook salmon, *Oncorhynchus tshawytscha*, or coho salmon, *Oncorhynchus kisutch* (cold water species); bluegill, *Lepomis macrochirus* (warm water species); and rainbow trout, *Salmo gairdneri* (cold water species) in accordance with the test guideline specified under § 797.1400 of this chapter, except for paragraphs (c)(4)(i) and (6)(iii)(A)(*2*) of § 797.1400.

* * * * *

(B) * * *

(*4*) In each chamber at 4, 7, and 14 days. If no dose-dependent mortality is observed by days 7 and 14, the concentration of dissolved test substance shall be measured in the chambers with the two highest concentrations only.

* * * * *

(ii) * * *

(A) The fish acute toxicity tests for chinook salmon, *Oncorhynchus tshawytscha*, or coho salmon, *Oncorhynchus kisutch*, and rainbow trout, *Salmo gairdneri*, shall be completed and the final results submitted to EPA within 12 months of the effective date of the final rule. The fish acute toxicity test for bluegill, *Lepomis macrochirus*, shall be completed and the final results submitted to EPA within 14 months of the effective date of the final rule.

* * * * *

(3) * * *

(ii) * * *

(A) The invertebrate acute toxicity tests shall be completed and the final results submitted to EPA within 14 months of the effective date of the final rule.

* * * * *

(5) * * *

(ii) * * *

(A) The bioconcentration test shall be completed and the final results submitted to EPA within 21 months of the effective date of the final rule.

* * * * *

(e) *Effective date.* (1) The effective date of this final rule is July 20, 1987, except for paragraphs (c)(2)(i)(A), (c)(2)(i)(B)(*4*), (c)(2)(ii)(A), (c)(3)(ii)(A), and (c)(5)(ii)(A) of this secton. The effective date for paragraphs (c)(2)(i)(A), (c)(2)(i)(B)(*4*), (c)(2)(ii)(A), (c)(3)(ii)(A), and (c)(5)(ii)(A) of this section is March 1, 1990.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

3. In § 799.925, by revising paragraphs (c)(3)(iii) and (e) to read as follows:

§ 799.925 Biphenyl.

* * * * *

(c) * * *

(3) * * *

(iii) *Reporting requirements.* The oyster shell deposition and range-finding study with biphenyl shall be completed and a final report submitted to EPA within 515 days from the effective date of the final Phase II rule. Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final Phase II rule.

* * * * *

(e) *Effective date.* (1) The effective date of this final Phase II rule for biphenyl is July 17, 1987, except for paragraph (c)(3)(iii) of this section. The effective date for paragraph (c)(3)(iii) of this section is March 1, 1990.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

4. In § 799.5055, by revising paragraphs (d)(1)(i), (d)(1)(ii), (d)(2)(ii), (e)(1)(i), (e)(1)(ii)(A), and (f), to read as follows:

§ 799.5055 Hazardous waste constituents subject to testing.

* * * * *

(d) * * *

(1) * * *

(i) *Required testing.* A soil adsorption isotherm test shall be conducted with the substances designated in paragraph (c) of this section in accordance with § 796.2750 of this chapter except that the provisions of § 796.2750 (b)(1)(vii)(A) shall not apply to 1,3-Dichloropropanol.

(ii) *Reporting requirements.* The sediment and soil adsorption isotherm tests shall be completed and the final results submitted to EPA within 9 months of the effective date of the final rule except that final results for testing of 1,3-Dichloropropanol and Methanethiol shall be completed and submitted to EPA within 11 months and 15 months, respectively, of the effective date of the final rule.

* * * * *

(2) * * *

(ii) *Reporting requirements.* The hydrolysis tests with the substances designated in paragraph (c) of this section shall be completed and the final results submitted to EPA within 6 months of the effective date of the final rule except that hydrolysis tests for Dibromomethane, Dihydrosafrole, Ethyl methacrylate, and Methyl chloride shall be completed and the final results submitted to EPA within 12 months of the effective date of the final rule; and hydrolysis tests for 1,2-Dichlorobenzene and 1,2,4,5-Tetrachlorobenzene shall be completed and final results submitted to EPA within 9 months of the effective date of the final rule.

(e) * * *

(1) * * *

(i) *Required test.* (A) An oral gavage subchronic toxicity test shall be conducted in the rat with the substances designated in paragraph (c) of this section except for Bis(2-chloroethoxy)methane (CAS No. 108-60-1), in accordance with § 798.2650 of this chapter.

(B) For Bis(2-chloroethoxy)methane, an oral gavage subchronic toxicity test shall be conducted in the rat in accordance with § 798.2650 of this chapter except for the provisions in paragraphs (e)(9)(i)(A) and (e)(9)(i)(B). For Bis(2-chloroethoxy)methane, the following provisions also apply:

(*1*) Hematology determinations shall be carried out at least two times during the test period: Just after dosing on day 30 and just prior to terminal sacrifice. Hematology determinations which are appropriate to all studies are: Hematocrit, hemoglobin concentration, erythrocyte count, total and differential

leukocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(*2*) Certain clinical biochemistry determinations on blood shall be carried out at least two times: Just after dosing on day 30 and just prior to terminal sacrifice. Test areas which are considered appropriate to all studies are: Electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance. Suggested determinations are: Calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with the period of fasting appropriate to the species), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen blood creatinine, total bilirubin and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include: Analysis of lipids, hormones, acid/base balance, methemoglobin, and cholinesterase activity. Additional clinical biochemistry may be employed, where necessary, to extend the investigation of observed effects.

(ii) * * *

(A) The oral gavage subchronic tests with the substances designated in paragraph (c) of this section shall be completed and submitted to EPA within 12 months of the effective date of the final rule except that the tests with Bis(2-chloroethoxy)methane, 1,3-Dichloropropanol, and Malononitrile shall be completed and the results submitted to EPA within 15 months of the effective date of the final rule.

* * * * *

(f) *Effective date.* (1) The effective date of the final rule is July 29, 1988, except for paragraphs (d)(1)(i), (d)(1)(ii), (d)(2)(ii), (e)(1)(i), and (e)(1)(ii)(A) of this section. The effective date for paragraphs (d)(1)(i), (d)(1)(ii), (d)(2)(ii), (e)(1)(i), and (e)(1)(ii)(A) of this section is March 1, 1990.

(2) The guidelines and other test methods cited here are referenced as they exist on the effective date of the final rule.

* * * * *

5. In § 799.2155, by revising paragraphs (c)(5)(i)(B)(*2*)(*i*), (c)(6)(i)(A)(*2*)(*i*), (c)(6)(i)(D)(*2*)(*iii*)(*A*)(*1*), and (d) to read as follows:

§ 799.2155 Commercial hexane.

* * * * *

(c) * * *

(5) * * *

(i) * * *

(B) * * *

(*2*) * * *

(*i*) *Cell growth and maintenance.* Appropriate culture media and incubation conditions (culture vessels, CO_2 concentrations, temperature, and humidity) shall be used. The cell culture shall be directly dosed by pipetting liquid commercial hexane mixed with liquid DMSO into the culture medium. Cells shall be exposed to test substance both in the presence and absence of an appropriate metabolic activation system.

* * * * *

(6) * * *

(i) * * *

(A) * * *

(*2*) * * *

(*i*) *Treatment with test substance.* The test substance shall be added in liquid form mixed with DMSO to the treatment vessels.

* * * * *

(D) * * *

(*2*) * * *

(*iii*) * * *

(*A*) * * *

(*1*) The in vitro cytogenetics test within 15 months of the effective date of the final rule.

* * * * *

(d) *Effective date.* (1) The effective date of the final rule for commercial hexane is March 21, 1988, except for paragraphs (c)(5)(i)(B)(*2*)(*i*), (c)(6)(i)(A)(*2*)(*i*), and (c)(6)(i)(D)(*2*)(*iii*)(*A*)(*1*) of this section. The effective date for paragraphs (c)(5)(i)(B)(*2*)(*i*), (c)(6)(i)(A)(*2*)(*i*), and (c)(6)(i)(D)(*2*)(*iii*)(*A*)(*1*) of this section is March 1, 1990.

(2) The guidelines and other test methods cited here are referenced as they exist on the effective date of the final rule.

* * * * *

6. In § 799.1285, by revising paragraphs (d)(1)(i), (d)(1)(ii)(A), (e)(1)(ii)(A), and (g), to read as follows:

§ 799.1285 Cumene.

* * * * *

(d) * * *

(1) * * *

(i) *Required testing.* (A) Saltwater and freshwater invertebrate and vertebrate tests, in a flow-through system, shall be conducted with cumene on the following organisms: *Daphnia magna*, to be conducted in accordance with § 797.1300 of this chapter; *Mysidopsis bahia* to be conducted in accordance with § 797.1930 of this chapter, and *Salmo gairdneri* and *Cyprinodon variegatus* to be conducted in accordance with § 797.1400 of this chapter except for the provisions in paragraph (d)(3)(iii) of § 797.1400. The total and dissolved (e.g. filtered) concentrations of the test substance shall be measured in each test chamber and delivery chamber before the test and in each test chamber at 0, 24, and 48 hours (*Daphnia magna*) and 0, 48, and 96 hours (*Mysidopsis bahia*, *Salmo gairdneri*, and *Cyprinodon variegatus*) to ascertain whether it is in solution.

(B)(*1*) For the purpose of this section, the following provisions also apply:

(*2*) *Temperature.* The test temperature shall be 12° C for rainbow trout. Excursions from the test temperature shall be no greater than † 2° C. The temperature shall be measured at least hourly in one test chamber.

(ii) * * *

(A) The acute toxicity tests shall be completed and the final reports submitted to EPA within 18 months of the effective date of the final rule.

* * * * *

(e) * * *

(1) * * *

(ii) *Reporting requirements.* (A) The biodegradation test in an aquatic system shall be completed and the final report submitted to EPA within 15 months of the effective date of the final rule.

* * * * *

(g) *Effective date.* (1) The effective date of this final rule for cumene is September 9, 1988, except for paragraphs (d)(1)(i) and (d)(1)(ii)(A), and (e)(1)(ii)(A) of this section. The effective date for paragraphs (d)(1)(i), (d)(1)(ii)(A), and (e)(1)(ii)(A) of this section is March 1, 1990.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

7. In § 799.1550, by revising paragraphs (c)(4)(ii), (d)(4)(iii)(A) and (e), to read as follows:

§ 799.1550 1,2-Dichloropropane.

* * * * *

(c) * * *

(4) * * *

(ii) *Test standard.* (A) The 2-generation reproductive effects testing with 1,2-Dichloropropane shall be conducted using the oral route of exposure in accordance with § 798.4700 except for the provisions in paragraphs (c)(7)(i) and (c)(7)(iii) of § 798.4700.

(B) For the purpose of this section, the following provisions also apply:

(*1*) A gross examination shall be made at least once each day. Pertinent behavioral changes, signs of difficult or prolonged parturition, and all signs of toxicity, including mortality, shall be

recorded. These observations shall be reported for each individual animal. Food and water consumption for all animals shall be monitored at least weekly except during the mating period.

(2) Each litter should be examined as soon as possible after delivery for the number of pups, stillbirths, live births, sex, and the presence of gross anomalies. Live pups should be counted and litters weighed at birth or soon thereafter, and at least weekly after parturition.

* * * * *

(d) * * *

(4) * * *

(iii) *Reporting requirements.* (A) The mysid chronic toxicity test shall be completed and the final report submitted to EPA within 15 months of the effective date of the final Phase II rule.

* * * * *

(e) *Effective date.* (1) The effective date of the final Phase II rule and the final single-phase pharmacokinetics rule for 1,2-Dichloropropane is November 18, 1987, except for paragraphs (c)(4)(ii), and (d)(4)(iii)(A) of this section. The effective date for paragraphs (c)(4)(ii), and (d)(4)(iii)(A) of this section is March 1, 1990.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

8. In § 799.1560, by revising paragraphs (c)(2)(ii)(A) and (e) to read as follows:

§ 799.1560 Diethylene glycol butyl ether and diethylene glycol butyl ether acetate.

* * * * *

(c) * * *

(2) * * *

(ii) *Reporting requirements.* (A) The neurotoxicity/behavioral tests required under paragraph (c)(2) of this section shall be completed and the final reports submitted to EPA within 17 months of the effective date of the final rule.

* * * * *

(e) *Effective date.* (1) The effective date of the final rule is April 11, 1988, except for paragraph (c)(2)(ii)(A) of this section. The effective date for paragraph (c)(2)(ii)(A) of this section is March 1, 1990. The effective date for paragraphs (c)(4)(ii)(A) and (c)(4)(ii)(B) of this section is November 27, 1989.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

9. In § 799.1575, by revising paragraphs (c)(4)(iii), (d)(2), (d)(3), and (f) to read as follows:

§ 799.1575 Diethylenetriamine (DETA).

* * * * *

(c) * * *

(4) * * *

(iii) *Reporting requirements.* The testing shall be completed and the final report submitted to EPA within 22 months of the effective date of the final Phase II rule. Progress reports shall be submitted at 6–month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(d) * * *

(2) *Test standard.* The testing shall be conducted in accordance with the following revised EPA-approved modified study plan (January 16, 1989) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Supplemented Revised Protocol (011689); Diethylenetriamine: Environmental Fate in Sewage, Lake Water and Soil". This revised EPA-modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

(3) *Reporting requirements.* The testing shall be completed and a final report submitted to EPA within 20 months of the effective date of the final Phase II rule. Interim progress reports shall be submitted at 6–month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

* * * * *

(f) *Effective date.* (1) The effective date of the final Phase II rule for diethylenetriamine is March 19, 1987, except for paragraphs (c)(4)(iii), (d)(2), and (d)(3) of this section. The effective date for paragraphs (c)(4)(iii), (d)(2), and (d)(3) of this section is March 1, 1990.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

10. In § 799.2475, by revising paragraph (a)(2), (d)(1)(i), (d)(2)(i)(B)(*3*), (e)(3)(ii)(A), and (f) to read as follows:

§ 799.2475 2-Mercaptobenzothiazole.

(a) * * *

(2) MBT of at least 97.6 percent purity (plus or minus 1.5 percent) shall be used as the test substance.

* * * * *

(d) * * *

(1) * * *

(i) *Required testing.* (A) Chronic toxicity testing of MBT shall be conducted using rainbow trout (*Salmo gairdneri.*) according to § 797.1600 of this chapter, except for paragraphs (c)(4)(iv)(A), (c)(4)(x)(E) and (c)(4)(x)(F), (c)(6)(iv)(A), (d)(2)(vii)(A)(*2*), and (d)(3)(iv) of § 797.1600.

(B) For the purpose of this section, the following provisions also apply:

(*1*) The first feeding for the fathead and sheepshead minnow fry shall begin shortly after transfer of the fry from the embryo cups to the test chambers. Silversides are fed the first day after hatch. Trout species initiate feeding at swim-up. The trout fry shall be fed trout starter mash or live newly-hatched brine shrimp nauplii (*Artemia salina*) three times a day *ad libitum*, with excess food siphoned off daily. The minnow fry shall be fed live newly-hatched brine shrimp nauplii (*Artemia salina*) at least three times a day.

(*2*) All physical abnormalities (e.g., stunted bodies, scoliosis, etc.) shall be photographed and preserved.

(*3*) At termination, all surviving fish shall be measured for growth. Total length measurements should be used except in cases where fin erosion occurs, then the use of standard length measurements shall be permitted. Standard length measurements should be made directly with a caliper, but may be measured photographically. Measurements shall be made to the nearest millimeter (0.1 mm is desirable). Weight measurements shall also be made for each fish alive at termination (wet, blotted dry, and to the nearest 0.01 g for the minnows and 0.1 g for the trout). If the fish exposed to the toxicant appear to be edematous compared to control fish, determination of dry, rather than wet, weight is recommended.

(*4*)(*i*) *Test substance measurement.* Prior to addition of the test substance to the dilution water, it is recommended that the test substance stock solution be analyzed to verify the concentration. After addition of the test substance, the concentration of test substance shall be measured in the test substance delivery chamber prior to beginning, and during, the test. The concentration of test substance should also be measured at the beginning of the test in each test concentration (including both replicates) and control(s), and at least once a week thereafter. Equal aliquots of test solution may be removed from each replicate chamber and pooled for analysis. If a malfunction in the delivery system is discovered, water samples shall be taken from the affected test chambers immediately and analyzed.

(*ii*) *pH.* It is recommended that a pH of 7 be maintained in the test chambers.

(*iii*) *Reporting.* An analysis of the stability of the stock solution for the duration of the test shall be reported.

(*5*) [Reserved]

(6) For brook and rainbow trout, a 16-hour light and 8-hour dark photoperiod shall be provided.

(2) * * *

(i) * * *

(B) * * *

(3) *Reporting.* An analysis of the stability of the stock solution for the duration of the test shall be reported and data comparing trout starter mash with *A. salina* for supporting trout growth should be submitted with the final report.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(A) The functional observation battery, motor activity, and neuropathology tests shall be completed and the final reports for each test submitted to EPA within 18 months of the effective date of the final rule.

* * * * *

(f) *Effective date.* (1) The effective date of this final rule is October 21, 1988, except for paragraphs (a)(2), (d)(1)(i), (d)(2)(i)(B)(3), and (e)(3)(ii)(A) of this section. The effective date for paragraphs (a)(2), (d)(1)(i), (d)(2)(i)(B)(3), and (e)(3)(ii)(A) of this section is March 1, 1990.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

11. In § 799.1053, by revising paragraphs (d)(4)(iii)(A) and (g) to read as follows:

§ 799.1053 Trichlorobenzenes.

* * * * *

(d) * * *

(4) * * *

(iii) * * *

(A) The freshwater invertebrate acute toxicity test shall be completed and the final report submitted to EPA within 411 days of the effective date of the final Phase II rule.

* * * * *

(g) *Effective date.* (1) The effective date of the final Phase II rule is August 14, 1987, except for paragraph (d)(4)(iii)(A) of this section. The effective date for paragraph (d)(4)(iii)(A) of this section is March 1, 1990.

(2) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

* * * * *

[FR Doc. 90-4688 Filed 2-28-90; 8:45 am]

BILLING CODE 6560-50-D

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301-16

[FTR Amdt. 8]

RIN 3090-AD53

Federal Travel Regulation; Agency Payments for Employee Travel and Relocation; Reporting Requirements

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This rule prescribes requirements and procedures for the reporting of travel and relocation cost data by selected Federal agencies for fiscal years 1989, 1990, and 1991. The Federal Civilian Employee and Contractor Travel Expenses Act of 1985, January 2, 1986, requires the Administrator of General Services to submit periodic analyses of agency payments for employee travel and relocation to the Director of the Office of Management and Budget (OMB). The analyses are to be based on a sampling survey of agencies each of which spent more than $5 million on employee travel and relocation during the previous fiscal year. The law further requires the selected agencies to provide the information necessary for preparing the analyses in a format prescribed by the Administrator and approved by the Director of OMB. This rule establishes a travel survey questionnaire as the format for reporting the required travel and relocation cost data.

DATES: Effective date: March 1, 1990.
Expiration date: June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Susan May, Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 301-16

Government employees, Travel, Travel allowances, Travel and transportation expenses, Transfers, Relocation assistance.

For the reasons set out in the preamble, title 41, chapter 301 of the Code of Federal Regulations is amended as set forth below.

CHAPTER 301—TRAVEL ALLOWANCES

1. Part 301-16 is added to read as follows:

PART 301-16—REQUIREMENT TO REPORT AGENCY PAYMENTS FOR EMPLOYEE TRAVEL AND RELOCATION

Sec.

Authority: 5 U.S.C. 5701-5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 301-16.1 Scope.

This part 301-16 applies to any Federal agency, as defined in 5 U.S.C. 5701(1), which spent more than $5 million on travel and transportation payments, including payments for employee relocation, during the fiscal year prior to the survey year.

§ 301-16.2 Applicability.

(a) The Departments/Agencies and suborganization listed in this paragraph are required to report fiscal year 1989 travel and relocation cost data to the General Services Administration. These Departments/Agencies and suborganizations were selected on the basis of fiscal year 1988 expenditures.

Department of Agriculture
- Agricultural Marketing Service
- Agricultural Research Service
- Agricultural Stabilization and Conservation Service
- Animal and Plant Health Inspection Service
- Farmers Home Administration
- Food Safety and Inspection Service
- Forest Service
- Soil Conservation Service
- Other

Department of Commerce
- Bureau of the Census
- International Trade Administration
- National Oceanic and Atmospheric Administration
- Other

Department of Defense
- Department of the Air Force
- Department of the Army
- Department of the Navy
- Marine Corps
- Other

Department of Education

Department of Energy
Department of Health and Human Services
Centers for Disease Control
Food and Drug Administration
Indian Health Service
National Institutes of Health
Social Security Administration
Other
Department of Housing and Urban Development
Department of Interior
Bureau of Indian Affairs
Bureau of Land Management
Bureau of Reclamation
Geological Survey
National Park Service
United States Fish and Wildlife Service
Other
Department of Justice
Drug Enforcement Administration
Federal Bureau of Investigation
Federal Prison System
Immigration and Naturalization Service
United States Attorneys
United States Marshals Service
Other
Department of Labor
Employment and Training Administration
Employment Standards Administration
Mine Safety and Health Administration
Occupational Safety and Health Administration
Other
Department of State
Department of Transportation
Federal Aviation Administration
Federal Highway Administration
United States Coast Guard
Other
Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms
Internal Revenue Service
Office of the Comptroller of the Currency
United States Customs Service
United States Secret Service
Other
Department of Veterans Affairs
Agency for International Development
Environmental Protection Agency
Federal Emergency Management Agency
General Accounting Office
General Services Administration
National Aeronautics and Space Administration
Nuclear Regulatory Commission
Office of Personnel Management
Peace Corps
Small Business Administration
Tennessee Valley Authority
United States Information Agency

(b) This section also applies to any Federal agency not specifically listed in paragraph (a) of this section that is within the scope of § 301–16.1 for fiscal years 1989 and 1990. These are the expenditure years for determining which agencies are required to report travel and relocation cost data for fiscal years 1990 and 1991.

§ 301–16.3 Reporting requirements.

(a) The reporting requirement is in the form of a travel survey questionnaire. The Federal Travel Questionnaire has been assigned Interagency Report Control No. 0362–GSA–AN. Copies of the Federal Travel Questionnaire for fiscal year 1989 reporting will be distributed to the heads of Departments/Agencies listed in § 301–16.2(a) beginning March 1, 1990. Questionnaires for subsequent years will be distributed to the designated points of contact (see § 301–16.3(d)) by September 30, 1990, for fiscal year 1990 reporting, and September 30, 1991, for fiscal year 1991. Questionnaires also may be obtained by writing to the General Services Administration, Federal Supply Service, Travel Management Division (FBT), Washington, DC 20406.

(b) Departments/Agencies containing major suborganizations are to submit responses as follows:

(1) A separate response from each suborganization which spent more than $5 million for travel and relocation during the fiscal year prior to the survey year;

(2) A consolidated response which covers all Department/Agency suborganizations which did not spend more than $5 million for travel and relocation during the fiscal year prior to the survey year; and

(3) A consolidated response which covers all components of the Department/Agency.

(c)The completed Federal Travel Questionnaire for fiscal year 1989 shall be submitted on or before May 30, 1991. Questionnaires for fiscal year 1990 and 1991, shall be submitted on or before March 1, 1991, and March 1, 1992, respectively. Agency responses should be sent to the General Services Administration, Federal Supply Service, Travel Management Division (FBT), Washington, DC 20406.

(d) Heads of affected agencies shall appoint a designee at the headquarters level who will be responsible for ensuring that the reporting requirements are complied with in a timely manner. The name, address, and telephone number of the designated individual shall be submitted by March 15, 1990, to: Director, Travel Management Division (FBT), Washington, DC 20406.

Dated: February 9, 1990.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 90–4501 Filed 2–28–90; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 207

RIN 3067–AB56

Great Lakes Planning Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is today publishing a final rule at 44 CFR part 207, to provide procedures for the implementation of section 202 of Public Law 100–707, the Great Lakes Planning Assistance Act of 1988 (The Act), enacted on November 23, 1988. The Act authorizes the Director of FEMA to provide assistance to Great Lakes States in the establishment of State programs to reduce and prevent damage attributable to high water levels in the Great Lakes. There were no comments on the Interim Rule, which was published on April 21, 1989.

DATES: This final rule will be effective on April 2, 1990.

FOR FURTHER INFORMATION CONTACT: Karen A. Helbrecht, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street SW., Washington DC 20472, Telephone (202) 646–3358.

SUPPLEMENTARY INFORMATION: Section 202 of the Great Lakes Planning Assistance Act allows the Great Lakes States to apply for a one-time grant of up to $250,000 for:

(1) Preparing mitigation, warning, and emergency plans;

(2) Coordinating available State and Federal assistance;

(3) Developing and implementing nonstructural measures to reduce or prevent damage; and

(4) Assisting local governments in developing and implementing plans.

Each State receiving a grant is required to match it with an amount equal to 25 percent of the Federal grant (the equivalent of 80 percent Federal and 20 percent State). Although funds for this program have not been appropriated, pursuant to section 202(b) of Public Law 100–707, interested States must have submitted an application within 1 year after the date of enactment, i.e., by November 23, 1989. The applications which have been received will be held until adequate funds have been appropriated. No grants will be awarded until sufficient funds have been appropriated. Brief technical

proposals serve as the initial application. They consisted of:

(1) The identification of the primary State agency responsible for managing the grant program,

(2) A brief description of each project for which funding is requested,

(3) Identification of the agency or organization responsible for implementing each project, and

(4) Identification of the amount of funding requested and how the cost share requirements will be met.

The formal grant applications will not be required until funds for this grant program have been appropriated. At that time, more detailed guidance will be sent to the States concerning the process. The States will be given the opportunity to revise their technical proposals and resubmit them with the required financial forms. The financial forms will include Application For Federal Assistance, Standard Form (SF) 424; Budget Information, SF 424A–D (where appropriate); and Financial Status Report (short form), SF 269A.

Environmental Considerations

In compliance with the National Environmental Policy Act, an Environmental Assessment (EA) and Finding of No Significant Impact has been prepared and is on file in the Office of General Counsel. The EA discusses the need for, and the environmental effects of the interim regulations. The Finding concludes that there will be no significant impact as a result of the regulations.

Executive Order 12291, "Federal Regulations"

This rule is not a major rule within the context of Executive Order 12291. It will not have an annual impact on the economy of $100 million or more. The rule will not have a significant economic impact on small entities, within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

Federalism

Consistent with Executive Order 12612, the rule is intended to assist Great Lakes States and local units of government in reducing and preventing damage attributable to high water levels in the Great Lakes. This program encourages Great Lakes States to develop their own program initiatives within the limits of authorized activity as allowed by the Act. The rule imposes no additional costs or burdens on the States, but rather, has long-term Federal and State cost-saving potential.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 3067–0203. Public reporting burden for the requirements is estimated to average 30 hours per response, including gathering and maintaining the data needed, and completing and reviewing each form. Send comments regarding this burden estimate or any aspect of this requirement, including suggestions for reducing this burden, to Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472; and to the Office of Management and Budget, Paperwork Reduction Project (3067–0203), Washington, DC 20503.

44 CFR chapter I, subchapter D, is amended by adopting as final part 207 and revising it to read as follows:

PART 207—GREAT LAKES PLANNING ASSISTANCE

Authority: Section 202, Title II, Public Law 100–707, 102 Stat. 4711 (33 U.S.C. 426p).

§ 207.1 General.

This subpart provides requirements and establishes general procedures for administration of one-time grants to States under the provisions of section 202 of the Great Lakes Planning Assistance Act of 1988. The Act authorizes the Director of the Federal Emergency Management Agency (FEMA) to provide assistance to the Great Lakes States to reduce and prevent damage attributable to high water levels in the Great Lakes. The assistance would include a one-time grant of not more than $250,000 for preparation of mitigation and emergency plans, coordinating available State and Federal assistance, developing and implementing measures to reduce damages due to high water levels, and assisting local governments in developing and implementing plans to reduce damages. Each State receiving a grant shall match it with an amount equal to 25 percent of the Federal grant. The grant should be used to supplement and extend existing activities and programs, to the extent possible.

§ 207.2 Definitions

(a) *Applicant* means a Great Lakes State.

(b) *Grant* means an award of financial assistance.

(c) *Grantee* means the State government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award. For the purposes of this regulation, the State is the grantee.

(d) *Grant Application* means the official request for funding under the Great Lakes Planning Assistance Grant program.

(e) *Great Lakes* means Lake Ontario, Lake Erie, Lake Huron, Lake Michigan, Lake Superior, and Lake St. Clair, to the extent those lakes are subject to the jurisdiction of the United States.

(f) *Great Lake States* means the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin.

(g) *High Water* includes static water level, wind generated waves, and runup.

(h) *Nonstructural Measures*, as the term is used in Part 207, are those actions taken to protect people and property from the effects of a hazard, but do not modify the nature, frequency, or intensity of the hazard. They include measures such as setbacks, land use and development standards, flood-proofing, and elevation or relocation of properties and structures at risk.

(i) *Structural Measures*, as the term is used in Part 207, are those actions taken to protect people and property from the effects of a hazard by modifying the nature, frequency or intensity of a hazard. They include measures such as floodwalls, levees, retaining walls, jetties, groins and other engineering works designed to control flooding and erosion.

(j) *Subgrant* means an award of financial assistance under a grant by a grantee to an eligible subgrantee.

(k) *Subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

(l) *Technical Proposal* means the initial submission by the State to FEMA indicating interest in the program and identifying projects for funding.

§ 207.3 Eligibility

(a) *Applicant Eligibility.* Each of the eight Great Lakes States (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and

Wisconsin) is eligible for this grant program. The State will be the grantee to which funds are awarded and will be accountable for the use of those funds. There may be subgrantees within the State.

(b) *Project Eligibility.* Each State shall identify projects and programs in the grant application and technical proposal. Projects and programs funded through this grant must comply with all applicable laws and regulations, including 44 CFR part 9, Floodplain Management and Protection of Wetlands, and 44 CFR part 10, Environmental Considerations. Categories of projects and programs eligible for funding under this grant program are:

(1) Preparation of plans for mitigation, warning, emergency operations, and emergency assistance. These plans must meet the following conditions, where applicable.

(i) All plans should be specific to reducing and/or preventing damage due to high water.

(ii) Mitigation plans should identify specific measures or recommendations to limit and/or prevent damages.

(iii) Emergency plans should identify measures to protect lives, property, and facilities.

(iv) All plans should be part of an overall State program to evaluate hazards and develop recommendations regarding the Great Lakes.

(2) Coordination of available State and Federal assistance. This task would be accomplished by determining the availability of funds and programs (at the Federal, State, local, and private level) and identifying how to most effectively use those resources to protect against future damages.

(3) Development and implementation of nonstructural measures to reduce or prevent damages. These measures could include the establishment of setback or dune preservation requirements and/or other conditions on construction and reconstruction of public and private facilities, development of enforcement procedures for nonstructural measures, and mapping flood and erosion hazard areas.

(4) Assist local governments in developing and implementing plans for nonstructural reduction and prevention of damages. This assistance would include providing a mechanism for local governments to apply for the grant program, assisting local governments in implementing mitigation measures, and providing technical assistance to local governments in developing nonstructural mitigation measures.

(c) *Duplication of Programs.* Great Lakes Planning Assistance Grants cannot be used as a substitute or replacement to fund projects or programs that are available under other Federal authorities.

(d) *Packaging of Programs.* Great Lakes Planning Assistance Grants can be packaged or used in combination with other Federal, State, local, or private funding sources where appropriate. However, the Grants cannot be used to meet the non-Federal cost share requirements of other Federal programs.

(Approved by the Office of Management and Budget under OMB control number 3067-0203).

§ 207.4 Application procedures.

(a) *General.* Technical proposals were required to have been filed by November 23, 1989.

(b) *Grant Application.* A formal grant application will not be required until such time as funds are appropriated for this grant program. At that time, the State will be given the opportunity to review and revise the technical proposal. The formal grant application will consist of the revised technical proposal and appropriate reports in accordance with 44 CFR Part 13.

(b) *Cost Share Requirement.* States receiving a grant shall match the grant with an amount no less than 25 percent of the amount of the Federal grant. Identification of allowable costs and rules for cost sharing are included in 44 CFR §§ 13.22 and 13.24.

(Approved by the Office of Management and Budget under OMB control number 3067-0203).

§ 207.5 Project management.

The State serving as grantee has primary responsibility for project management and accountability of funds as indicated in 44 CFR Part 13. The State is responsible for ensuring that subgrantees meet all program requirements.

§ 207.6 Technical assistance.

(a) *General.* Requests from a State to FEMA for technical assistance in carrying out any activity of this grant program shall be made by the Governor or his/her designated representative to the Regional Director (reference § 202(c) of the Act).

(b) *Content of Request.* The request for technical assistance shall indicate as specifically as possible the objectives, nature, and duration of the requested assistance; the professional disciplinary capabilities needed; the recipient agency or organization within the State; the manner in which such assistance is to be utilized; and any other information needed for a full understanding of the need for such requested assistance.

(c) *State Participation.* The request for assistance requires participation by the State in the technical assistance process. As part of its request for such assistance, the State shall agree to facilitate coordination among FEMA and all subgrantees in need of assistance.

(Approved by the Office of Management and Budget under OMB control number 3067-0203)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 90-4551 Filed 2-28-90; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-612; RM-6485 & RM-6727]

Radio Broadcasting Services; Bridgman & Three Oaks, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 248A to Bridgman, Michigan, as that community's first local service, in response to a counterproposal filed by Bridgman Broadcasting. The coordinates for Channel 248A are 41-56-36 and 86-33-18. Canadian concurrence has been obtained for this allotment. Bridgman has a 1980 census population of 2,235. A Notice was issued in response to a petition for rule making filed by John Keeley, proposing the allotment of Channel 248A to Three Oaks, Michigan, as that community's first FM broadcast service. The 1980 census population for Three Oaks is 1,774. The proposals for Bridgman and Three Oaks are mutually exclusive and no other channel is available for allotment to either community. Based on population, the Commission allots Channel 248A to Bridgman.

DATES: Effective April 9, 1990; The window period for filing applications will open on April 10, 1990, and close on May 10, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-612, adopted January 31, 1990, and released

February 22, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan is amended by adding Bridgman, Channel 248A.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–4649 Filed 2–28–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–296; RM–6635]

Television Broadcasting Services; Springville, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Michael A. Williams, allots UHF TV Channel 67+ to Springville, New York, as the community's first local TV service. Channel 67+ can be allotted to Springville in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.8 kilometers (5.5 miles) south to avoid a short-spacing to Channel 60 at St. Catherines, Ontario, Canada, and to the proposed allotment of Channel 62 to Arcade, New York. The coordinates for this allotment are North Latitude 42-26-02 and West Longitude 78-38-06. Canadian concurrence has been received since Springville is located within 250 miles of the U.S.-Canadian border. This allotment is not affected by the temporary freeze on new allotments within the minimum co-channel separation distance to any of the metropolitan areas identified in the Commission's Public Notice. See Order, 52 FR 28346, July 29, 1987. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 9, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–296, adopted January 31, 1990, and released February 22, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authroity citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the TV Table of Allotments under New York is amended by adding Springville, Channel 67+.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–4646 Filed 2–28–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–105; RM–6643]

Television Broadcasting Services; Coos Bay, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of California Oregon Broadcasting, Inc., allots UHF TV Channel 41 to Coos Bay, Oregon, as the community's second local television service. Channel 41 can be allotted to Coos Bay in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.2 kilometers (7.6 miles) south. The coordinates for this allotment are North Latitude 43–16–00 and West Longitude 124–16–35. Any application which is filed for this channel which does not specify at least a 175 mile separation to Portland, Oregon, may not be accepted for filing if the Commission's freeze on such applications is still in effect. See Order, 52 FR 28346, July 29, 1987. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 9, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–105, adopted January 31, 1990, and released February 22, 1990. The full text of this Commmission decision is available for inspection and copying normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the TV Table of Allotments under Oregon is amended by adding Channel 41 to Coos Bay.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–4648 Filed 2–26–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–53; RM–6614]

Radio Broadcasting Services; Salem and Sioux Falls, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Big Sioux Broadcasting, Inc., substitutes Channel 263C1 for Channel 263C2 at Salem, South Dakota, modifies its construction permit for Station KSML accordingly, substitutes Channel 252A for Channel 261A at Sioux Falls, South Dakota, and modifies the license of Sioux Falls College for Station KCFS accordingly. Channel 263C1 and Channel 252A can be allotted to Salem and Sioux Falls, respectively, in compliance with the Commission's

minimum distance separation requirements. Channel 263C1 can be used at the presently authorized site for Station KCFS. The coordinates for Channel KSML and Channel 252A can be used at the presently authorized site for Station 263C1 at Salem are North Latitude 43–29–18 and West Longitude 97–26–34. The coordinates for Channel 252A at Sioux Falls are North Latitude 34–31–57 and West Longitude 96–44–20. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 9, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–53, adopted January 31, 1990, and released February 22, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended under South Dakota, by removing Channel 263C2 and adding Channel 263C1 at Salem, and by removing Channel 261A and adding Channel 252A at Sioux Falls.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–4647 Filed 2–28–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–106; RM–6568, RM–6888]

Radio Broadcasting Services; Weston and Webster Springs, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 272B1 for Channel 272A at Weston, West Virginia, and modifies the license of Station WSSN(FM) at Weston to specify operation in the higher powered channel, as requested by Stonewall Broadcasting Corporation. *See* 54 FR 21262, May 17, 1989. This action provides Weston and the surrounding area with expanded FM service. In addition, this action allots Channel 262A to Webster Springs, West Virginia, as that community's first local FM service, at the request of Deloris Swann. The allotment of Channel 272B1 at Weston requires a site restriction of 12.3 kilometers (7.6 miles) east of the city at coordinates 39–00–00 and 80–20–00. The coordinates for Channel 262A at Webster Springs are 38–28–42 and 80–24–54. Both allotments require compliance with the notification requirement of Section 73.1030(a) of the Commission's Rules. With this action, this proceeding is terminated.

DATES: Effective April 9, 1990; The window period for filing applications on Channel 262A at Webster Springs, West Virginia, will open on April 10, 1990, and close on May 10, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–106, adopted January 31, 1990, and released February 22, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under West Virginia, by removing Channel 272A and adding Channel 272B1 at Weston; and adding Webster Springs, Channel 262A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–4645 Filed 2–28–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 87

[DA 90–186]

Aviation Services; Editorial Amendments to Aviation Services Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: This document clarifies and corrects four sections of part 87 (Aviation Services) of the Commission's Rules. This action will aid the public in using the rules.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Eric Malinen, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 87

Aeronautical stations, General aviation, Radio.

Order

Adopted: February 5, 1990.
Released: February 21, 1990.

By the Chief, Private Radio Bureau:

1. This *Order* amends part 87 (Aviation Services) of the Commission's Rules, 47 CFR part 87, to clarify and to correct four sections of the rules. Section 87.137 of the Commission's Rules, 47 CFR 87.137, permits the use of digital data links on certain aeronautical enroute frequencies. Footnote 5 and the emissions table it accompanies are revised to indicate more clearly the emissions permissible for such data links. Additionally, § 87.345(e), 47 CFR 87.345(e), is removed because it duplicates information found in adjacent rule sections. Further, minor non-substantive corrections are made to §§ 87.173 and 87.187, 47 CFR 87.173 and 87.187.

2. Because these amendments are minor, non-substantive, do not impose any additional burdens, and raise no issue on which comments would serve any useful purpose, prior notice of rule making, effective date provisions, and public procedure on such matters are not required under the Administrative Procedure Act or the Commission's Rules, *see* 5 U.S.C. 553 and 47 CFR 1.412(b) and 1.427(b).

3. Accordingly, *it is ordered* that, under the authority contained in sections 4(i), 5(c)(1), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c)(1), and 303(r), and section 0.331 of the Commission's Rules, 47 CFR 0.331, part 87 of the Commission's Rules is

amended as set forth in the attached Appendix, effective on publication in the **Federal Register.**

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Appendix

Part 87 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 87—[AMENDED]

1. The authority citation for part 87 continues to read:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609, unless otherwise noted.

2. In § 87.137, paragraph (a) is amended by adding a new row between the current fourth and fifth rows in the table and by revising footnote 5 to read as follows:

§ 87.137 Types of emission.

(a) * * *

Class of emission	Emission designator	Authorized bandwidth (kilohertz) Below 50 MHz	Above 50 MHz	Frequency deviation
*	*	*	*	*
A2D [5]	13K0A2D	.....	50	.....
*	*	*	*	*

Notes:

* * * * *

[5] This emission may be authorized for audio frequency shift keying and phase shift keying for digital data links on any frequency listed in § 87.263(a)(1) or § 87.263(a)(3). 13K0A2D emission may be authorized on frequencies not used for voice communications. If the channel is used for voice communications, 13K0A9W emission may be authorized, provided the data is multiplexed on the voice carrier without derogating voice communications. Aircraft stations and ground stations must receive specific Commission approval prior to using this emission.

* * * * *

3. In § 87.173, paragraph (b) is amended by removing the rows that correspond to the two frequencies 2372.5 kHz and 2375.5 kHz, by removing the fifteen rows starting with frequency 4467.5 kHz and ending with frequency 4631.5 kHz, and by adding the following rows in numerical order to read as follows:

§ 87.173 Frequencies.

* * * * *

(b) Frequency table:

Frequency or frequency band	Subpart	Class of station	Remarks
*	*	*	*
2182.0 kHz	F	MA	International distress and calling.
2371.0 kHz	R	MA, FAP	Civil Air Patrol.
*	*	*	*
4466.0 kHz	R	MA, FAP	Civil Air Patrol.
4469.0 kHz	R	MA, FAP	Civil Air Patrol.
4506.0 kHz	R	MA, FAP	Civil Air Patrol.
4509.0 kHz	R	MA, FAP	Civil Air Patrol.
4550.0 kHz	I	AX	Gulf of Mexico.
4582.0 kHz	R	MA, FAP	Civil Air Patrol.
4585.0 kHz	R	MA, FAP	Civil Air Patrol.
4601.0 kHz	R	MA, FAP	Civil Air Patrol.
4604.0 kHz	R	MA, FAP	Civil Air Patrol.
4627.0 kHz	R	MA, FAP	Civil Air Patrol.
4630.0 kHz	R	MA, FAP	Civil Air Patrol.
*	*	*	*

4. In § 87.187, paragraphs (w)(2) and (w)(3) are revised to read as follows:

§ 87.187 Frequencies.

* * * * *

(w) * * *

(2) FAA Flight Service Station frequencies 121.975–122.675 MHz.

(3) The unicom frequencies 122.700, 122.725, 122.800, 122.950, 122.975, 123.000, 123.050 and 123.075 MHz.

* * * * *

5. In § 87.345, paragraph (e) is removed and paragraph (f) is redesignated as paragraph (e).

[FR Doc. 90–4650 Filed 2–28–90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF AGRICULTURE

48 CFR Part 415

[Agriculture Acquisition Circ. No. 3]

Acquisition Regulation

AGENCY: Office of Operations, Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule authorizes the Department of Agriculture (USDA) contracting officers to release, under certain conditions, proposals outside the Government solely for evaluation purposes. The Federal Acquisition Regulation (FAR) 15.413 allows the use of alternate procedures by which proposals may be released to non-Government evaluators, if authorized in implementing agency regulations. The effect of this rulemaking is to amend the Agriculture Acquisition Regulation (AGAR) to authorize the use of the alternate procedures described in the FAR.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Larry Schreier, Office of Operations, U.S. Department of Agriculture, Washington, DC 20250; telephone (202) 447–8924.

SUPPLEMENTARY INFORMATION:

A. Background

On March 21, 1989, the Department of Agriculture published a notice of proposed rule making in the **Federal Register** (54 FR 11550). The notice invited public comments by April 20, 1989 on the proposed Agriculture Acquisition Circular No. 3, which would amend the Agriculture Acquisition Regulation (AGAR). No public comments were received. Comments that were received from contracting activities within the agency were editorial in nature. They were considered and adopted to the extent that they would eliminate duplication of provisions of the FAR, and improve the clarity of this final rule.

FAR 15.413–1 provides that after receipt of proposals none of the information contained in them shall be made available to the public, or to anyone in the Government not having a legitimate interest. FAR 15.413–2 provides that, when agency regulations authorize the Alternate II procedures in FAR 15.413–2, those procedures may be used instead of the procedures in FAR 15.413–1.

This rule adopts the alternate procedures in FAR 15.413–2 for USDA. FAR 15.413–2 permits disclosure of proposals outside the Government only to the extent authorized by, and in accordance with, the procedures in FAR 15.413–2(f). Notwithstanding an authorization of the procedures in FAR 15.413–2, this AGAR rule also retains the restrictions relating to release of proposal information in FAR 15.413–1, paragraphs (a) and (b), to the extent those restrictions are not duplicated in FAR 15.413–2.

The USDA is adopting these alternate procedures in order to obtain the opinions of experts outside the Government for evaluating proposals which involve a high level of detailed expertise, especially in areas of complex and constantly changing technology, such as ADP and telecommunications resources.

B. Executive Order No. 12291

OMB Bulletin No. 85–7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring Office of Management and Budget review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The USDA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The rule is intended to permit USDA to implement an authority under the FAR to release proposals outside the Government for evaluation.

List of Subjects in 48 CFR Part 415

Government procurement, Contracting by negotiation.

For the reasons set out in the preamble, part 415 of title 48 Code of Federal Regulations is amended as follows:

PART 415—CONTRACTING BY NEGOTIATION

1. The authority citation for part 415 continues to read as follows:

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

2. Section 415.413 is added to read as follows:

415.413 Disclosure and use of information before award.

(a) Contracting officers shall use the Alternate II procedures in FAR 15.413–2 and this 415.413 for the evaluation of proposals.

(b) The contracting officer may release proposals outside the Government for evaluation purposes, if the HCA approves the written justification therefor submitted by the contracting officer. The justification must show in sufficient detail the special needs or circumstances requiring the services of experts outside the Government.

(c) During the preaward or preacceptance period, only the contracting officer, the head of the cognizant contracting office, provided such person has contractual authority, or others specifically authorized by either of them may communicate technical or other information to, or conduct discussions with, offerors. Information shall not be furnished to an offeror if, alone or together with other information, it may afford the offeror an advantage over other offerors. (See FAR 15.610) However, general information that is not prejudicial to other offerors may be furnished.

(d) Agency personnel and non-Government evaluators having authorized access to information contained in proposals shall disclose neither the number of offerors nor their identity to the public or to anyone in Government not having a legitimate interest.

(e) The contracting officer shall obtain the following written certification and agreement from the non-Government evaluator prior to the release of any proposal to that evaluator.

CERTIFICATION AND AGREEMENT FOR THE USE AND DISCLOSURE OF PROPOSALS

RFP# _____

Offeror _____

1. I certify that to the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to perform an impartial, and objective review of the offeror's proposal, or may otherwise result in a biased opinion or an unfair advantage. In making this certification, I have considered all of my stocks, bonds, other outstanding financial interests or commitments, employment arrangements (past, present, or under consideration), and, to the extent known by me, all financial interests and employment arrangements of my spouse, minor children, and other members of my immediate household, that might place me in a position of conflict, real or apparent, with the evaluation proceedings.

2. I agree to use proposal information only for evaluation purposes. I understand that any authorized restriction on disclosure placed upon the proposal by the prospective contractor or subcontractor or by the Government shall be applied to any reproduction or abstracted information of the proposal. I agree to use my best effort to safeguard such information physically, and not to disclose the contents of, nor release any information relating to, the proposal(s) to anyone outside of the Source Evaluation Board or other panel assembled for this acquisition, or other individuals designated by the Contracting Officer.

3. I agree to return to the Government all copies of proposals, as well as any abstracts, upon completion of the evaluation.

_____

(Name and Organization)

_____

(Date of Execution)

(End of Certificate)

(g) The release of a proposal outside the Government for evaluation does not constitute the release of information for purposes of the Freedom of Information Act (5 U.S.C. 552).

(h) The contracting officer shall attach a cover page bearing the GOVERNMENT NOTICE FOR HANDLING PROPOSALS, as stated in FAR 15.413–2(e), to each proposal upon receipt. The last sentence of the notice shall cite 48 CFR 415.413 as the implementing regulation.

Dated: February 23, 1990.

Frank Gearde, Jr.,

Director, Office of Operations.

[FR Doc. 90–4769 Filed 2–28–90; 8:45 am]

BILLING CODE 3410–98–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 33

RIN 1018–AA50

Refuge-Specific Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) hereby amends certain regulations in 50 CFR part 33 that pertain to fishing on individual national wildlife refuges (NWRs). Refuge fishing programs are reviewed annually to determine whether the regulations governing fishing on individual refuges should be modified. Changing environmental conditions, state and Federal regulations and other factors affecting fish populations and habitats may warrant such amendments. The modifications ensure the continued compatibility of fishing with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge fishing programs consistent with state regulations.

EFFECTIVE DATE: April 2, 1990.

FOR FURTHER INFORMATION CONTACT: Larry LaRochelle, Division of Refuges, Fish and Wildlife Service, 18th and C Streets NW., MS 670–ARLSQ, Washington, DC 20240; Telephone 703–358–2043.

SUPPLEMENTARY INFORMATION: 50 CFR part 33 contains the provisions that govern fishing on NWRs. Fishing is regulated on refuges to (1) ensure compatibility with primary refuge purposes, (2) properly manage the fishery resource, and (3) protect other refuge values. On many refuges, the Service policy of adopting state fishing regulations is an adequate way of meeting these objectives. On other refuges it is necessary to supplement state regulations with refuge-specific fishing regulations which will ensure

that the Service meets its management responsibilities, as outlined under the section entitled "Conformance With Statutory and Regulatory Authorities." These regulations may list the seasons, methods of taking fish, descriptions of open areas and other provisions. The Service has previously issued refuge-specific fishing regulations in 50 CFR part 33. Refuge-specific fishing regulations are issued only after the final publication of the opening of a wildlife refuge to fishing. This rule amends and supplements certain refuge-specific regulations in 50 CFR part 33, §§ 33.8 through 33.51, which pertain to fishing on individual refuges in their respective alphabetically listed state.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. On November 3, 1989, at FR 46427 the Service published a proposed rulemaking to amend certain regulations in 50 CFR part 33 and invited the public to comment. No comments were received. Therefore, the proposed refuge-specific fishing regulations are here published, with minor technical corrections, as a final rulemaking.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k) govern the administration and public use of NWRs. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior (Secretary), under such regulations as he may prescribe, to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations and access when he determines that such uses are compatible with the major purposes for which such areas were established.

The RRA authorizes the Secretary to administer refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the area was established. The RRA also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Fishing plans are developed for each fishing program on a refuge prior to its opening to fishing. In many cases, refuge-specific fishing regulations are included as part of fishing plans to ensure the compatibility of the fishing programs with the purposes for which the refuge was established. Compliance with the NWRSAA and RRA is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of the refuge to the list of areas open to fishing in 50 CFR part 33. Continued compliance is ensured by annual review of fishing programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexbility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

These amendments to the codified refuge-specific fishing regulations make relatively minor adjustments to existing fishing programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, state or local governments, agencies or geographic regions. The benefits accruing to the public are expected to exceed the costs of administering this rule. Accordingly, the Department has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB as cited below:

Type of information collection	OMB approval No.
Economic and public use permits	1018–0014

Public reporting burden for this form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of refugees to the list of areas open to sport fishing in 50 CFR part 33. Refuge-specific fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular refuge. The changes proposed in this rulemaking would not significantly alter the existing uses of the refuges involved.

Information regarding the conditions that apply to individual refuge fishing programs, any restrictions related to public use on the refuge and a map of the refuge are available at refuge headquarters. This information can also be obtained from the regional offices of the Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon and Washington:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1002 NE. Holladay Street, Portland, Oregon 97232; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee and the Virgin Islands:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife

Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303; Telephone (404) 331–0833.

Region 5—Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia:

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965–9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming:

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska:

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; Telephone (907) 786–3538.

Larry LaRochelle, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this document.

List of Subjects in 50 CFR Part 33

Fishing, National wildlife refuge system, Wildlife refuges.

PART 33—[AMENDED]

Accordingly, part 33 of chapter I of title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 33 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd and 715i.

2. Section 33.4 is amended to reflect a name change by deleting the Columbian White-tailed Deer National Wildlife Refuge and adding the Julia Butler Hansen Refuge for the Columbian White-tailed Deer in alphabetical sequence under the State of Washington as follows:

§ 33.4 List of open areas; sport fishing.

* * * * *

Washington

* * * * *

Julia Butler Hansen Refuge for the Columbian White-tailed Deer.

* * * * *

3. Section 33.8 is amended by revising paragraph (a) introductory text and adding paragraph (a)(6) as follows:

§ 33.8 Arkansas.

(a) *Big Lake National Wildlife Refuge.* Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(6) Frogging is permitted from the beginning of the State frogging season through October 31. The use of archery equipment for taking frogs is not permitted.

* * * * *

4. Section 33.13 is amended by removing paragraph (h); redesignating paragraphs (a) through (g) as (b) through (h) and adding a new paragraph (a) as follows:

§ 33.13 Florida.

(a) *Arthur R. Marshall Loxahatchee National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted only from sunrise to sunset on all areas of the refuge except the management impoundments and those areas marked by signs as closed to public entry or fishing.

(2) Only the use of rods and reels or poles and lines is permitted, and this fishing equipment must be attended at all times.

(3) Commercial fishing or the taking of frogs or turtles is not permitted.

(4) The possession or use of trotlines, gigs, jugs, seines, castnets or other fishing devices not described above is not permitted.

* * * * *

5. Section 33.17 is amended by revising paragraph (b)(4) and revising the heading of paragraph (d) as follows:

§ 33.17 Illinois.

* * * * *

(b) * * *

(4) Largemouth bass under 15" in length may not be taken from A–41, Bluegill or Blue Heron Ponds, Crab Orchard Lake or Managers or Honkers Ponds.

(d) *Upper Mississippi River National Wildlife and Fish Refuge.* * * *

* * * * *

6. Section 33.19 is amended by revising the heading of paragraph (d) as follows:

§ 33.19 Iowa.

* * * * *

(d) *Upper Mississippi River National Wildlife and Fish Refuge.* * * *

* * * * *

7. Section 33.22 is amended by revising paragraph (e), redesignating paragraphs (f) as (g) and (g) as (h); adding new paragraph (f) and revising newly designated paragraph (g)(4) as follows:

§ 33.22 Louisiana.

* * * * *

(e) *Lacassine National Wildlife Refuge.* Fishing and crayfishing are permitted on designated areas of the refuge subject to the following condition: Fishing is permitted from 1 hour before sunrise until 1 hour after sunset during the period of March 15 through October 15.

(f) *Lake Ophelia National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing and public access is permitted from one-half hour before sunrise until one-half hour after sunset only from March 1 through October 15 in areas posted by refuge signs and/or designated in refuge brochures.

(2) Fishing and public access is permitted year-round from one-half hour before sunrise until one-half hour after sunset in areas posted by refuge signs and/or designated in refuge brochures.

(3) Access to refuge fishing areas is restricted to those roads and trails posted by refuge signs and/or designated by refuge brochures.

(4) Only nonmotorized boats, boats with electric motors, and boats with motors of 25 horsepower or less are permitted in refuge waters. Boats may not be left on the refuge overnight.

(5) The ends of trotlines must consist of a length of cotton line that extends from the point of attachment into the water.

(g) *Sabine National Wildlife Refuge.*

* * *

(4) All other refuge waters are open to fishing, crabbing, crayfishing and shrimping from March 15 through October 15 only.

* * * * *

8. Section 33.26 is amended by revising paragraph (a)(2)(i); removing paragraph (a)(2)(ii) and redesignating paragraphs (a)(2)(iii) through (v) as paragraphs (a)(2)(ii) through (iv) as follows:

§ 33.26 Michigan.

(a) *Seney National Wildlife Refuge.* * * *

(2) * * * (i) Fishing is permitted from May 15 through September 30 during daylight hours only.

* * * * *

9. Section 33.27 is amended by revising paragraph (b) and the heading of paragraph (f) as follows:

§ 33.27 Minnesota.

* * * * *

(b) *Minnesota Valley National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Only bank fishing is permitted.

(2) Ice fishing is permitted when ice conditions are safe.

(3) Ice fishing shelters must be removed from the refuge following each day's fishing activity.

* * * * *

(f) *Upper Mississippi River National Wildlife and Fish Refuge.* * * *

10. Section 33.32 is amended by revising paragraphs (a) (1) through (3); revising paragraph (b)(2), adding paragraphs (b) (4) through (8) as follows:

§ 33.32 Nevada.

(a) * * *

(1) Fishing is permitted year-round with the exception of North Marsh which is closed annually during the waterfowl hunting season.

(2) Only non-motorized boats and boats with electric motors are permitted on Upper Lake, Middle Pond and Lower Lake.

(3) The use of boats, rubber rafts or other flotation devices is not permitted on North Marsh.

(b) * * *

(2) Only dike fishing is permitted in the areas north of the Brown Dike and east of the Collection Ditch with the exception that fishing by wading and from personal flotation devices (float tubes) is permitted in Unit 21 and portions of Unit 10.

* * * * *

(4) Beginning June 15 annually and continuing until December 31 annually, motorless boats and boats with battery powered electric motors are permitted only on the South Sump.

(5) Beginning August 1 annually and continuing until December 31 annually, boats propelled with a motor or combination of motors in aggregate not to exceed 10 horsepower rating are permitted on the South Sump.

(6) Boats may be launched only from designated landings.

(7) No boats of any kind may be stored on the refuge from January 1 through March 31.

(8) Fishing is prohibited from the west bank of the Collection Ditch between Bressman Cabin and Passey Springhole, in the hatchery rearing and brooding ponds, Cave Creek west of the County road and from the dike between Units 14 and 20 as posted.

11. Section 33.34 is amended by revising paragraphs (a)(2) and (a)(3) as follows:

§ 33.34 New Jersey.

(a) * * *

(2) Boat and bank fishing are permitted in and along Lily Lake. Boat ramp facilities are not available; only cartop launches will be permitted.

(3) Fishing, clamming and crabbing are not permitted from land or on any waters within tract 122X locally known as the AT&T properties. This area is closed to all public use.

* * * * *

12. Section 33.53 is amended by revising paragraph (d) as follows:

§ 33.53 Wisconsin.

* * * * *

(d) *Upper Mississippi River National Wildlife and Fish Refuge.* Fishing is permitted subject to the following condition:

(1) Only hand powered boats or boats with electric motors are permitted on Mertes' Slough in Buffalo County, Wisconsin.

Dated: January 16, 1990.

Knute Knudson, Jr.,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 90-4705 Filed 2-28-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: .The Director, Alaska Region, NMFS (Regional Director), has determined that the joint venture flatfish fisheries have attained their primary prohibited species catch (PSC) allowance of Pacific halibut (660 mt) in Zones 1 and 2H of the Bering Sea and Aleutian Islands (BSAI) area. Therefore, the Secretary of Commerce (Secretary) is prohibiting any further receipt by permitted foreign fishing vessels of groundfish caught from Zones 1 and 2H that is composed of 20 percent or more yellowfish sole, "other flatfish," and rock sole in the aggregate. This action is necessary to prevent excessive bycatch of Pacific halibut in the trawl fishery for groundfish in an area of particular importance to the Pacific halibut stock. This action is intended to carry out the objectives of measures to control the bycatch of prohibited species in the trawl fishery for groundfish.

EFFECTIVE DATE: February 27, 1990, through December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Ellen Varosi, Fishery Management Biologist, NMFS, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802-1668, telephone: (907) 586-7229.

SUPPLEMENTARY INFORMATION: The Secretary approved, on July 7, 1989, Amendment 12A to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 12A was implemented by the Secretary with a final rule published August 9, 1989 (54 FR 32642) and effective September 3, 1989, through December 31, 1990.

The purpose of Amendment 12A is to limit incidental catches of the prohibited species Tanner crab (*Chionocetes bairdi*), red king crab, and Pacific halibut by the groundfish fisheries in the BSAI area. Such incidental catches are referred to as bycatches in fisheries targeting other species. The amendment establishes five PSC limits, each of which are apportioned among four fisheries: The domestic annual processing (DAP) fisheries for "flatfish," DAP for "other species," the joint venture processing (JVP) fisheries for "flatfish," JVP for "other species."

Each of the 20 PSC allowances prescribed for the 1990 groundfish fisheries appears in the initial specifications notice for 1990 for the BSAI published January 16, 1990 (55 FR 1434). The PSC allowances were based on the anticipated bycatch of prohibited species derived by a mathematical prediction procedure, which used statistical information derived from fishery performance in previous years and projected performance for the 1990 fishing year. JVP quotas for species in the "other fisheries" categories were insufficient to allow directed fishing for those species. As a result, at the beginning of the 1990 season, the only JVP directed fisheries allowed were for yellowfin sole and "other flatfish," and PSC allowances for the "other fisheries" were all set at zero. The primary PSC allowance for Pacific halibut in Zones 1 and 2H for the JVP flatfish fisheries is 660 mt.

Closure

The Regional Director has determined that the JVP flatfish allowance for Pacific halibut in Zones 1 and 2H has

been reached. Therefore, the Secretary, by this notice and under authority of § 675.21(c)(3)(iii), prohibits for the remainder of the fishing year the receipt by foreign vessels of groundfish caught from Zones 1 and 2H (statistical areas 511, 512, 516, and 517) that is composed of 20 percent or more of yellowfish sole, "other flatfish," and rock sole in the aggregate. Because no other groundfish species have been allocated to JVP, the effect of this action is to prohibit receipt by foreign vessels of any groundfish caught from Zones 1 and 2H.

Classification

These actions are taken under §§ 675.20 and 675.21 and they comply with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Recordkeeping and reporting requirements.

Dated: February 23, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management.

[FR Doc. 90-4621 Filed 2-26-90; 11:51 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 41
Thursday, March 1, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318 and 381

[Docket No. 86-044P]

RIN 0583-AA75

Sodium Lactate and Potassium Lactate as Flavor Enhancers and Flavoring Agents in Various Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) has been petitioned to amend the Federal meat and poultry products inspection regulations to permit the use of sodium lactate and potassium lactate as flavor enhancers and flavoring agents in various meat and poultry products.

The Food and Drug Administration (FDA) has affirmed these substances as generally recognized as safe (GRAS) for use as direct human food ingredients. FSIS is proposing to add sodium lactate and potassium lactate as flavor enhancers and flavoring agents to the Chart of approved substances in the Federal meat and poultry products inspection regulations.

DATES: Comments must be received on or before April 2, 1990.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral Comments as provided by the Poultry Products Inspection Act should be directed to Mr. Ashland L. Clemons, at (202) 447-6042. (See also Comments under "Supplementary Information.")

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a "major rule" within the scope of E.O. 12291. It will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule would provide for the use of sodium lactate and potassium lactate as flavor enhancers and flavoring agents at levels not to exceed 2.0 percent in cooked meat and poultry products, cured cooked meat, and raw poultry products. Currently, Federal meat and poultry products inspection regulations permit the use of lactic acid (sodium and potassium salts) as an acidifier at levels sufficient for purpose in various meat and poultry products [9 CFR 318.7(c)(4) and 381.147(f)(4)]. Industry would benefit because a wider variety of flavor enhancers and flavoring agents would be permitted for use in meat and poultry products.

Effect on Small Entities

The Administrator has made an initial determination that this proposed rule will not have a significant economic impact upon a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This proposal would impose no new requirements on industry; rather, it would permit the meat and poultry industries to use new flavor enhancers and flavoring agents in various meat and poultry products. Use of these substances would be voluntary.

Comments

Interested persons are invited to submit written comments concerning the proposal. Written comments should be sent to the Policy Office. Please include the docket number which appears in the heading of this document. Any person desiring an opportunity for an oral presentation of views should make such request to Mr. Ashland L. Clemons so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted in response to the proposal will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

The Agency has been petitioned by Oscar Mayer Foods Corporation to amend the Federal meat and poultry products inspection regulations to allow the use of sodium lactate and potassium lactate as flavor enhancers and flavoring agents in cooked meat and poultry products. The petitioner wishes to use sodium lactate and potassium lactate to contribute to the salty taste in cooked meat and poultry products. Oscar Mayer contends that sodium lactate and potassium lactate can be used in conjunction with sodium chloride (common table salt) to achieve a salty flavor in these products. In support of this contention, the petitioner has conducted flavor studies in cooked meat and poultry products, comparing the levels for equivalent saltiness of sodium lactate and sodium chloride. Results from these studies have revealed that in Roasted Turkey Breast, 2.1 percent sodium lactate has the equivalent saltiness equal to 0.5 percent sodium chloride; and in cured cooked beef, 2.5 percent sodium lactate equals 0.8 percent sodium chloride. Oscar Mayer feels that their data "clearly demonstrates that sodium lactate has the technical effect of a flavoring by contributing to the salty taste of products." The petitioner has presented no figures on the levels of use necessary to achieve saltiness equivalence for potassium lactate, but has estimated that they would be the same as for sodium lactate. The Agency agrees with the petitioner's estimate, concerning potassium lactate, due to FDA's assessment of sodium lactate and potassium lactate and reports on lactic acid and lactates that affirm that sodium and potassium salts of lactic acid will perform the technical effects of flavor enhancer and flavoring agent.

While the Agency was evaluating the petition and background information from Oscar Mayer Foods Corporation, a petition, supported by pertinent technical information, was also

submitted by Shenandoah Products, Inc., for the use of sodium lactate up to 2.0 percent in raw poultry as a flavor enhancer. The technical information includes results of taste panel and chemical rancidity evaluations of ground turkey samples. The data submitted by Shenandoah Products show results from taste panel evaluations of cooked gorund turkey patties containing four different levels of sodium lactate. The four different levels used were 0.0 percent (control samples), 0.5 percent, 1.0 percent, and 2.0 percent. Samples were evaluated for their "meaty" flavor by a trained taste panel at Webb Technical Group, Inc., Raleigh, North Carolina 27607. In each replication of the panel, ground turkey with sodium lactate was preferred over the flavor of control samples. Three of the four replication samples with 2.0 percent sodium lactate were scored higher than other samples.

FSIS believes that meat and poultry products will not become adulterated by the use of sodium lactate or potassium lactate as flavor enhancers and flavor agents in processing at levels that do not exceed 2.0 percent. These substances were affirmed as GRAS by the FDA on April 6, 1987, for use as direct human food ingredients, as flavor enhancers, flavoring agents, adjuvants, humectants, and pH control agents except in infant formulas and infant foods. Sodium lactate and potassium lactate were added to 21 CFR part 184.1639 and 184.1768 (52 FR 10884). That regulation affirmed these substances as GRAS at levels sufficient for purpose when used in accordance with good manufacturing practices.

Based upon FDA's prior safety determinations, as evidenced by its GRAS findings, sufficient regulatory authority exists for the Agency to determine that sodium lactate and potassium lactate may be approved for use as flavor enhancers and flavoring agents in meat and poultry products not produced for consumption by infants. These substances will be permitted at levels not to exceed 2 percent. It has been determined that a level of 2 percent is sufficient to give the intended effects. Usage of these substances for purposes other than flavoring or flavor enhancement would not be permitted. Since sodium lactate and potassium lactate are not presently listed as flavoring agents and flavor enhancers in the Agency Charts of approved substances in § 318.7(c)(4) and § 381.147(f)(4), this rulemaking will require amendment of the Charts.

Proposed Rule

The Administrator believes that (1) the proposed use of sodium lactate and potassium lactate would be in compliance with applicable FDA requirements, (2) their use would be functional and suitable for the products intended, (3) the substances would be used at the lowest level necessary to accomplish their intended technical effect, and (4) the use of these substances in products would not render them adulterated, misbranded, or otherwise not in accordance with the requirements of the Federal Meat Inspection Act and the Poultry Products Inspection Act.

Therefore, FSIS is proposing to amend the Chart of approved substances in § 318.7 and § 381.147 to include the use of sodium lactate and potassium lactate as flavor enhancers and flavoring agents at levels not to exceed 2.0 percent for use in various meat and poultry products.

List of Subjects

9 CFR Part 318

Food additivies; Meat inspection.

9 CFR Part 381

Food additivies; Poultry products inspection.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS: REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

2. Section 318.7 would be amended by adding the substances, sodium lactate and potassium lactate, to the Chart of substances approved for use in the preparation of products. These substances would be placed in alphabetical order under the class of substances titled "Flavoring agents; protectors and developers."

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Flavoring agents; protectors and developers.	Potassium lactate	To flavor product	Various meat and meat food products except in infant formula and infant food[2].	Not to exceed 2.0 percent of formulation. In accordance with 21 CFR 184.1639.[3]
	Sodium lactate	do	do	Not to exceed 2.0 percent of formulation. In accordance with 21 CFR 184.1768.[3]
*	*	*	*	*

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 Stat. 450; 21 U.S.C. 451–470; 601–695; 33 U.S.C. 1254; 7 CFR 2.17, 2.55.

2. Section 381.147 would be amended by adding the substances, sodium lactate and potassium lactate to the Chart of substances approved for use in the preparation of products. These substances would be placed in alphabetical order under the class of substances titled "Flavoring agents; protectors and developers."

§ 381.147 Approval of substances for use in the preparation of products.

* * * * *

(f) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Flavoring agents; protectors and developers.	Potassium lactate	To flavor product	Various poultry and poultry food products except in infant formula and infant food[3].	Not to exceed 2.0 percent of formulation. In accordance with 21 CFR 184.1639.[4]

Class of substance	Substance	Purpose	Products	Amount
	Sodium lactate	do	do	Not to exceed 2.0 percent of formulation. In accordance with 21 CFR 184.1768.[4]
•	•	•	•	•

Done at Washington, DC, on February 9, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 90-4643 Filed 2-28-90; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-05-AD

Airworthiness Directives; Beech 99 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Beech 99 Series airplanes, which would require replacement of exisiting steel wing-attach bolts and nuts with Inconel bolts and nuts. Inconel bolts and nuts provide superior stress corrosion resistant qualities and eliminate the need for existing mandatory repetitive inspections for stress corrosion cracking on steel bolts and nuts. The actions specified in this proposal would preclude the loss of wing attachment integrity due to undetected wing-attach bolt stress corrosion.

DATES: Comments must be received on or before April 16, 1990.

ADDRESSES: Beech Structural Inspection and Repair Manual, and Beechcraft Mandatory Service Bulletin No. 2248, dated February 1988, applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 681-7111. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-05-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMS

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-05-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion: As a result of reports of stress corrosion in steel wing-attach bolts, the FAA issued AD 85-22-05 which mandated repetitive inspections of the steel wing-attach bolts and nuts on a number of Beech airplanes including the Beech 99 series airplane. AD 85-22-05 does not apply to airplanes fitted with Inconel wing-attach bolts and nuts. Recently, structural failures involving large transport category airplanes have caused the FAA to reexamine the airworthines issues relating to aging commuter-class airplanes. Public meetings and operators data have confirmed that airplanes of this class are being operated well beyond the times envisioned by the manufacturer at the time of design and manufacture. Considering the experienced gained in the transport industry, the FAA has determined that action must be taken with the aging commuter fleet prior to the occurrence of a catastrophic structural failure.

The continued airworthiness of airplanes can normally be maintained by proper inspection, maintenance, and when necessary, by parts replacement. On airplanes being operated beyond their expected design life, the FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections or special operating procedures. Long term special operating procedures may not provide the degree of safety assurance necessary. This, coupled with a better understanding of the human factors associated with numerous continual special procedures, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. At an April, 1989 public conference, the General Aviation Manufacturers Association (GAMA) and the Regional Airline Association (RAA) recommended twenty-three (23) separate industry and government actions intended to resolve the aging commuter airplane issue. Recommendation No. 3 stated: "The FAA should take the lead, working closely with industry, to review existing ADs on all airplanes used in regional air carrier service to determine if repetitive inspections need to be replaced by terminating actions."

In December 1989, the FAA conducted a review of the existing ADs applicable to the Beech 99 series airplanes, and identified AD 85-22-05 (which requires repetitive inspections) as one that could be terminated by the installation of an improved part. AD 85-22-05 applies to H-11 steel wing attach bolts in the front spar only. However, steel bolts that are susceptible to corrosion may also be present at the rear spar attachements. The proposed action would repalce each

steel bolt existing at any of the four attachments on each wing with an Inconel bolt.

In addition, AD 88-04-07 was issued to require a one time inspection for cracks of certain Inconel nuts unless a specially marked Part No. 81790-1414 nut was installed. The action proposed by this notice extends this requirement to replacement nuts at the lower, forward wing attachment. The FAA finds that the action proposed by this notice meets the intent of GAMA/RAA Recommendation No. 3 and is consistent with current FAA policy. Since the condition described is likely to exist or develop in other Beech 99 Series airplanes of the same design, the proposed AD would require replacement of the existing steel wing-attach bolts and nuts with specific Inconel wing-attach bolts and nuts.

The FAA has determined there are approximately 100 airplanes affected by the proposed AD. The cost of modifying these airplanes as required by the proposed AD is estimated to be $3,000 per airplane. The total cost is estimated to be $300,000. The total cost of complying with the proposed AD is less than $100 million, the threshold for a singificant rule. This cost per airplane is less than the threshold significant cost amount for those small entities operating one airplane and the FAA has determined, on the basis of the aircraft registration records, that less than ⅓ of the owners of the affected airplanes own more than 1 of the affected airplanes so as to incur a cost greater than the significant amount threshold. The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; Febvruary 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD.

Beech: Applies to Beech 99 Series (all Serial Numbers) airplanes certificated in any category

Compliance: Required within the next 12 calendar months aftet the effective date of this AD, unless already accomplished.

To preclude the loss of wing attachment integrity due to undetected wing-attach bolt stress corrosion, accomplish the following:

(a) Replace any existing steel wing-attach bolts and nuts with Inconel wing attach bolts and nuts in accordance with the instructions in Beech Structural Inspection and Repair Manual, P/N 98-39006, dated December 20, 1984, or revisions thereto through Revision A4, dated May 1, 1987.

(b) Immediately after installation any new Inconel nut in the lower, forward wing attachment per paragraph (a) of this AD, except those specially marked with Part No. 81790-1414, visually inspect the nut for cracks in accordance with the instructions in Beechcraft Mandatory Service Bulletin 2248, dated February 1988. Prior to further flight, replace any nut found cracked with a specially marked Part No. 81790-1414 nut per Figure 2 of the above referenced Service Bulletin.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(d) An alternate method of compliance or adjustment of the compliance time which provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4400.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 681-7111; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 12, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-4626 Filed 2-28-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AEA-02]

Proposed Establishment of Transition Area; Upperville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA has received a request from the airport owner to establish a 700 foot Transition Area for the Upperville, VA Airport. This is to accommodate an existing "Special" Standard Instrument Approach Procedure (SIAP) for which the airport owner has reimbursed the FAA for the development of the procedure. The FAA finds it necessary that a 700 foot transition area be established to contain arriving and departing aircraft at this airport to separate aricraft operating under instrument meteorological conditions from those operating under visual conditions in controlled airspace.

DATES: Comments must be received on or before April 2, 1990.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch, AEA-530, Docket No. 90-AEA-02, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation

Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917–0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90–AEA–02." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 14430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a new 700 foot Transition Area at the Upperville, VA Airport to accommodate an existing "Special" SIAP. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition Areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [New]

2. Section 71.181 is amended as follows:

Upperville, VA [New]

That airspace extending upward from 700 feet above the surface within a 8.5-mile radius of the Upperville Airport (lat. 38°58'18"N., long. 77°52'12"W.).

Issued in Jamaica, New York, on February 7, 1990.

Billy E. Commander,

Acting Manager, Air Traffic Division.

[FR Doc. 90–4627 Filed 2–28–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–012–90]

RIN 1545–A049

General Rule for Taxable Year of Inclusion; Election To Include Crop Insurance Proceeds in Gross Income in the Taxable Year Following the Taxable Year of Destruction or Damage

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations clarifying the applicability of section 451(d) of the Internal Revenue Code (regarding the taxable year of inclusion for crop insurance proceeds) to certain federal payments made to farmers. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Proposed regulation § 1.451–6T is proposed to be effective for payments received after December 31, 1973. Written comments and requests for a public hearing must be delivered by April 30, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IA–012–90) Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: P. Val Strehlow, 202–377–9586 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Income Tax Regulations (26 CFR part 1) that provide rules relating to the applicability of section 451(d) of the Internal Revenue Code to certain federal payments. The preamble of the temporary regulations explains the concerns underlying the enactment of section 451(d) and the issuance of these proposed regulations.

Explanation of Provisions

Under the proposed regulations, federal payments received as a result of (a) destruction or damage to crops caused by drought, flood, or any other natural disaster or (b) the inability to plant crops because of such a natural disaster, shall be treated as insurance proceeds received as a result of destruction or damage to crops for purposes of section 451(d) of the Code.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner of Internal Revenue by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is P. Val Strehlow of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revuenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the proposed regulations, on matters of both substance and style.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90-4602 Filed 2-23-90; 4:28 pm]

BILLING CODE 4830-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 43, 74, 78, 94

[General Docket Nos. 90-54, 80-113; FCC 90-60]

Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, Private Operational-Microwave Fixed Service, and Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Proposed Rules and Inquiry.

SUMMARY: This action proposes modification of certain rules in the Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS"), Instructional Television Fixed Service ("ITFS"), Private Operational-Fixed Microwave Service ("OFS"), and Cable Television Relay Service ("CARS"). It also initiates an inquiry in the advisability of additional changes in the MMDS, ITFS, and OFS services. These rule changes will be pursued to modernize and to conform the rules in the various services in order to reduce the impediments to the enhance the viability of MDS services offering multiple channels of premium video programming over-the-air directly into homes.

DATES: Comments must be submitted on or before April 23, 1990, and reply comments on or before May 23, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Romano at (202) 632-9356.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking and Notice of Inquiry* in Gen. Docket No. 90-54, FCC 90-60, Adopted February 8, 1990, and Released February 22, 1990.

1. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

2. In this *Notice of Proposed Rulemaking and Notice of Inquiry* ("*Notice*"), the Commission is proposing the modification of rules governing the MDS, MMDS, ITFS, OFS, and CARS services. In recent years, the technical capability to deliver multiple channels of premium programming to homes over the air via microwave frequencies has emerged. The channels encompassed by this technology, however, are found in three different services, and are subject to three separate, and often different, sets of regulations. Moreover, many of the regulations were developed prior to a full appreciation for requirements of a multiple channel direct-to-home video programming delivery system. The needs that have arisen are the need to amass multiple channels, the need for some conformance in performance characteristics on those channels, the need for a quality signal, the need for reasonably-sized service areas, and the need for a minimum regulatory burden.

3. Some of the initiatives in the current *Notice*, originated in earlier rulemaking proceeding directed at the OFS and MDS services. *Notice of Proposed Rulemaking* in PR. Docket No. 88-191, 53 FR 23132, June 20, 1988, 3 FCC Rcd 3532; *Further Notice of Proposed Rulemaking and Notice of Inquiry* in Gen. Docket No. 80-113, 49 FR 25486, June 21, 1984, 98 FCC2d 7. The comments submitted in those proceedings which are relevant to the issues raised in the instant *Notice* will be incorporated into the instant proceeding, and parties are urged to reference, rather than reiterate, those comments.

4. The Commission proposes to eliminate its ownership restrictions in the OFS and MMDS services, so that a single entity could be licensed for all three OFS channels and all ten MDS and MMDS channels in an area. In order to simplify and accelerate the coordination and application grant process, the Commission proposes: to clarify its rules that permit an MMDS permittee to seek modification of its authorized facilities where such modification will reduce, but will not eliminate interference with other MDS licensees and permittees; to permit "forced upgrades" of ITFS systems at MDS expense to eliminate interference problems that disqualify some MDS applications; and to permit forced migration of some ITFS systems that are grandfathered on MDS spectrum and underutilizing the spectrum, where alternative spectrum is available and all expenses will be paid by the MDS entity seeking the spectrum. It also proposes to ease the restrictions on MMDS operators' lease of excess capacity on ITFS systems, and to prohibit or restrict ownership and/or control of MDS and OFS channels by cable television systems within their franchised service areas. It also proposes to: increase the maximum output power limit for MDS operators and, perhaps, for OFS and ITFS

operators; to specify output power limitations in EIRP (effective isotropically radiated power) for MDS, ITFS, and OFS service; to conform, if possible the allocation/protection standards of the MDS, OFS and ITFS services; to tighten the permissible transmitter tolerance for new OFS, ITFS, and MDS stations and to reduce out-of-band emissions; and to modify the aural power level limits for OFS, MDS, and ITFS to increase licensees' flexibility in adjusting their systems to avoid adjacent channel interference. It also proposes to authorize signal "boosters" for all three services, to improve reception in "shadowed" areas, seeking comment on the appropriate regulatory regimen for such boosters, and to increase MDS operators' access to low power television and CARS facilities. It seeks comment on the advisability of a first-come, first-served application process. It proposes to reduce the information required of common carrier MDS operators in their annual reports, and to extend the reporting requirement to all MDS operators and to OFS H-channel operators.

5. In the Inquiry section of the *Notice*, the Commission seeks comment on the advisability of permitting non-ITFS entities to apply for vacant ITFS channels, and on possible methods for preserving some critical portion of such ITFS frequencies for future ITFS use. It also seeks comment on the advisability of reallocating the H channels from the OFS to the MDS service.

6. Regulatory Flexibility Act of 1980: The proposed rule changes would significantly reduce the amount and complexity of information required in annual reports for MDS common carrier operators, by eliminating the submission of balance sheets, income statements, catagorized reporting of hours of operation, and information on affiliation agreements. The remaining information requirements, for total number of subscribers and total hours of operation, would be extended to all MDS operators and to OFS operators on the H channels. Many small entities could be positively affected by this proposal because the regulatory impediments to MDS operators would be reduced, which should increase their ability to offer multichannel video service to homes. Some ITFS operators would be positively affected as well because in increase in MDS activity could increase MDS leasing of excess capacity on ITFS facilities. There are no significant alternatives minimizing the impact on small entities and consistent with the stated objectives.

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and it may impose new or modified requirements or burdens on the public. Implementation of any new or modified requirements or burdens will be subject to approval by the Office of Management and Budget as prescribed by the Act.

8. This is a restricted notice and comment rule making proceeding. *See* section 1.1229 of the Commission's rules, 47 CFR 1.1229, for rules regarding permissible *ex parte* contacts.

9. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 23, 1990, and reply comments on or before May 23, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects

47 CFR Part 21

Communications common carriers, Domestic Public Fixed Radio Services.

47 CFR Part 43

Communication common carriers, Reports of communication common carriers and certain affiliates.

47 CFR Part 74

Television broadcasting, Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Service.

47 CFR Part 78

Cable television, Cable Television Relay Service.

47 CFR Part 94

Radio, Private Operational-Fixed Microwave Service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-4651 Filed 2-28-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-46, RM-7145]

Radio Broadcasting Services; Ketchum, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by LeeMay Broadcasting Company, Inc. seeking the substitution of Channel 298C1 for Channel 298C2 at Ketchum, Oklahoma, and the modification of its license for Station KGND accordingly. Channel 298C1 can be allotted to Ketchum in compliance with the Commission's minimum distance separation requirements with a site restriction of 47.5 kilometers (29.5 miles) northwest to avoid a short-spacing to Stations KAYI, Channel 295C, Muskogee, Oklahoma, KMOQ, Channel 296A, Baxter Springs, Kansas, and KLMK, Channel 297C, Poteau, Oklahoma, and to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 36-46-33 and West Longitude 95-27-15. In accordance with section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Ketchum.

DATES: Comments must be filed on or before April 16, 1990, and reply comments on or before May 1, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bob May, Vice President and General Manager, LeeMay Broadcasting Company, Inc., P.O. Box 419, Vinita, Oklahoma 74301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commissioner's Notice of Proposed Rule Making, MM Docket No. 90-46, adopted January 31, 1990, and released February 22, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47d CFR 1.124(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-4652 Filed 2-28-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-05; Notice 1]

Federal Motor Vehicle Safety Standards; School Bus Passenger Seating and Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Grant of petition for rulemaking.

SUMMARY: This notice announces a grant of a petition from Mr. Lyle Stephens and Ms. Debra Simms for rulemaking to amend FMVSS No. 222, *School Bus Passenger Seating and Crash Protection*, to establish requirements for schoolbus seating for handicapped students.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gauthier, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (202) 366-0842.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard (FMVSS) 222, *School Bus Passenger Seating and Crash Protection* (49 CFR 571.222), specifies occupant protection requirements for school bus passenger seating and restraining barriers. The requirements apply to each "school bus pssenger seat." That term is defined in S4 of the Standard as a seat in a school bus, other than the driver's seat or a seat installed to accommodate handicapped passengers as evidenced by orientation of the seat in a direction that is more than 45 degrees to the left or right of the longitudinal centerline of the vehicle." The requirements included limits on the spacing between adjacent rows of seats in order to keep students compartmentalized or contained within their immediate seating area during a crash. Application of the requirements to seating for the handicapped would have made the use of that seating by the handicapped difficult, if not impossible, in many instances. Thus, the current requirements in the Standard do not apply to seating that is designed to accommodate handicapped passengers.

Within the last year, a NHTSA task force undertook a review of NHTSA activities in several areas concerning handicapped individuals. One of the areas examined was the safety of school bus passengers who are confined to wheelchairs. As a result of the task force's work, the agency's Office of Research and Development initiated a study of the state-of-the art of wheelchair securement and occupant protection systems on school buses to support possible future rulemakings. Engineering support for this research is being provided by the Department of Transportation's Transportation Systems Center (TSC) in Cambridge, Massachusetts. TSC is expected to issue a final report in the Spring of 1990.

NHTSA has also been examining efforts by various standards organizations and international agencies concerning standards for the transportation of persons in wheelchairs. While none of these efforts is specifically directed to children on school buses together they do suggest recent advancements in the state-of-the-art. Among these efforts are the International Standards Organization's draft standard "Wheelchair Tie-Down and Occupant Restraint System for Motor Vehicles" (October 31, 1989), and the Swedish Board of Transport's "Regulations for Adapting Public Transport Vehicles for Use by Disabled Persons" (Preliminary Edition, May 10, 1989). NHTSA is also studying Australian Standard 2942-1987, "Wheelchair Occupant Restraint Assemblies for Motor Vehicles;" the Canadian Standards Association's "Motor Vehicles for the Transportation of Physically Disabled Persons" (CAN3-D409-M84, amended December 1986); the United Kingdom's Code of Practice VSE 87/1, "The Safety of Passengers in Wheelchairs on Buses;" and a draft standard developed by the Society of Automative Engineers. These standards typically include provisions for both wheelchair securement systems and occupant restraints (i.e., safety belts).

Concurrent with these NHTSA activities in support of possible rulemaking, the Department of Transportation's Office of Civil Rights received a "complaint" from the law firm of White, Beekman, Przybylowicz, Schneider, & Bair, P.C., submitted on behalf of Mr. Lyle Stephens and Ms. Debra Simms. The complaint states that Mr. Stephens is the owner of a company specializing in the transportation of handicapped students and developmentally disabled adults throughout the mid-Michigan area, and has been active in committees concerned with transportation of the handicapped, and that Ms. Simms is the parent of a handicapped student. The complaint was referred to NHTSA for appropriate action. The complaint alleges that FMVSS 222 provides "differing benefits and opportunities for participation regarding transportation, the discrimination being on the basis of handicap with the result being to defeat or substantially impair accomplishment of the objectives of section 504 [of the Rehabilitation Act of 1973, as amended], as well as the Education for All Handicapped Children Act." The complainant's attorney has indicated that the relief his clients seek is rulemaking.

While there is some uncertainty as to whether section 504 of the Rehabilitation Act of 1973, as amended, is applicable to Federal Motor Vehicle Safety Standards promulgated by NHTSA, and the Education for All Handicapped Children Act clearly is not, NHTSA nevertheless is concerned about the safety of handicapped students in school buses. The agency believes that it is appropriate to consider possible amendments to FMVSS 222, particularly in light of advances in the state-of-the-art pertaining to wheelchair securement systems and occupant restraints. The agency notes that any changes in the Standard would have to be accomplished through rulemaking, consistent with the Administrative Procedures Act and the National Traffic and Motor Vehicle Safety Act of 1966.

Accordingly, NHTSA has decided to treat the complaint as a petition for rulemaking to amend FMVSS No. 222 and has granted the petition. The granting of this petition does not mean that a rule will necessarily be issued. The determination of whether to issue a rule will be made in the course of the rulemaking proceeding in accordance with satutory criteria.

A docket has been established for this rulemaking. Copies of the petition, NHTSA's response thereto, an the documents mentioned above are being placed in this docket. The final report from TSC will be placed in the docket when it becomes available. At that time, NHTSA intends to provide a public comment period for interested persons to submit written comments on the rulemaking. However, comments may be submitted at any time, including the

period prior to the official request for public comments.

Authority: 15 U.S.C. 1392, 1401, 1497; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 23, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-4691 Filed 2-28-90; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 55, No. 41
Thursday, March 1, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 23, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

• Animal and Plant Health Inspection Service.

7 CFR 322 Honeybees and Honeybee Semen.

None.

On occasion.

Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 60 responses; 15 hours; not applicable under 3504(h).

Philip Lima (301) 436-8896.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 90-4695 Filed 2-28-90; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

[Docket No. 89-220]

Horse Protection Certified Designated Qualified Person (DQP) Programs and Licensed DQP's

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of currently certified DQP (Designated Qualified Person) programs and licensed DQP's.

SUMMARY: This notice advises the general public and the horse industry of the Designated Qualified Person (DQP) programs currently certified by the Department and the currently licensed Designated Qualified Persons (DQP's) under each certified program.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, REAC, APHIS, USDA, Room 206, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. (301) 436-7833.

SUPPLEMENTARY INFORMATION: Section 11.7(b)(8) of the Horse Protection Regulations (9 CFR part 11) states in relevant part "* * *. A current list of certified DQP [Designated Qualified Person] programs and licensed DQP's will be published in the **Federal Register** at least once each year, and as may be further required for the purpose of deleting programs and names of DQP's that are no longer certified or licensed, and of adding the names of DQP's that are no longer certified or licensed, and of adding the names of programs and DQP's that have been certified or licensed subsequent to the publication to the previous list."

This document lists the DQP programs which are currently certified and lists the currently licensed DQP's under those programs. This list supersedes the list published in the **Federal Register** on February 16, 1988, (53 FR 4438-4439, Docket No. 87-183), and serves as notice to the general public and the horse industry that the programs listed are currently licensed, according to the regulations in 9 CFR part 11.

The Certified DQP programs and the DQP's licensed by each certified program are as follows:

(a) American Fox Trotting Horse Breed Association, Inc., Marshfield, MO 65706.

No shows, sales, auctions, or exhibits reported during 1989 or DQP's reported as licensed qualified during 1989.

(b) Heart of America Walking Horse Association, Eolia, MO 63344. Licensed DQP's:

ILLINOIS

Floyd Hampshire, Barry, IL

MISSOURI

Harold Magers, Moberly, MO
Ted Nichols, Ozark, MO
Paul Patterson, Osborn, MO
Elvin Sapp, Columbia, MO
Steve Skopec, Bolivar, MO
R. D. Wilson, Hannibal, MO

(c) Missouri Fox Trotting Horse Breed Association, Inc., Ava, MO 65608. Licensed DQP's:

ARKANSAS

Ervin Johnson, Berryville, AR

MISSOURI

John Belshi, Warrensburg, MO
Mylo J. Brown, West Plains, MO
Roy P. Brown, Ava, MO
Deryl L. Caswell, Lebanon, MO
Don Crawford, Marshfield, MO
Don E. Freeman, Mansfield, MO
Ted Nichols, Ozark, MO
Rondo Prock, Ava, MO
Bill Roark, Springfield, MO
Radell Sapp, Columbia, MO
LeRoy Seiner, Humansville, MO
Lee Yates, Lebanon, MO
Marshall Yates, Lebanon, MO

TEXAS

Yvonna Shepherd, Allen, TX
Patt Swainn, Jr., Paris, TX
Susan Thiel, Greenville, TX

(d) National Horse Show Regulatory Committee.
Licensed DQP's:

ALABAMA

Claude Johnson, E., Goshen, AL
Grady Parsons, Bessemer, AL
Barney A. Porter, Cullman, AL
Edgar Dale Smith, Hollywood, AL
Ricky L. Statham, Blountsville, AL

ARKANSAS

Robert Chris Allen, Ward, AR

Percy Moss, Jr., El Dorado, AR

CALIFORNIA

William (Bill) A. Hartman, Norco, CA
Sharon E. McCaleb, Fair Oaks, CA

COLORADO

Kenneth L. Willis, Aurora, CO

GEORGIA

Glenn Powell, Kennesaw, GA
Albert M. "Bo" Turner, Social Circle, GA

ILLINOIS

Phillip J. Williams, Barry, IL

KENTUCKY

Bob Flynn, Winchester, KY
Thomas E. Garland, Mayfield, KY
John Goldey, Lancaster, KY
Doug Watkins, Nebo, KY

MICHIGAN

John L. Prigg, Lake Orion, MI

MISSISSIPPI

Ed Abernathy, Shannon, MS
Earl Melton, Laurel, MS
Cary C. Myers, Corinth, MS

MONTANA

Patricia Jordan, Bozeman, MT

NORTH CAROLINA

G.K. Mease, Marion, NC
Tommy Howard West, Candler, NC

OHIO

Sandra E. Beebe, N. Lawrence, OH

OKLAHOMA

Ann Kuykendall, Muskogee, OK

OREGON

Bruce Rumpf, Wilsonville, OR

SOUTH CAROLINA

James Allen McKnight, Lugoff, SC
Eddie Potts, Port Mill, SC
Arnold "Sarge" Walker, Easley, SC

TENNESSEE

Craig Allen Bacon, Rockwood, TN
George W. Bacon, Rockford, TN
Ralph E. Chaffin, Cookeville, TN
James E. "Jimmy" Cole, Jackson, TN
Joe L. Cunningham, Rockwood, TN
Roger Hand, Shelbyville, TN
Gary Kimmons, Dickson, TN
Dana Kyte, Fall Branch, TN
Larry R. Landreth, Powell, TN
William (Bill) Lones, Niota, TN
Chris Messick, Murfreesboro, TN
Lonnie Messick, Murfreesboro, TN
Edmond "Ed" O'Neill, Pinson, TN
Ronnie Slack, Englewood, TN
Mike Swafford, Spring City, TN
Charles Thomas, Lynchburg, TN

TEXAS

Dean Cox, Conroe, TX
R. Keith Pickard, Highland, TX
Chris Trachier, Marshall, TX

WASHINGTON

Skip Bickford, Spanaway, WA
Rose Bostion, Puyallup, WA
Stephen M. Brown, Yelm, WA

WEST VIRGINIA

Greg Thomason, Princeton, WV

(e) Spotted Saddle Horse Breeders' and Exhibitors' Association, Shelbyville, TN 37160.
Licensed DQP's:

TENNESSEE

Joe "Buck" Beard, Belfast, TN
Brenda Butner, Christiana, TN
Robert Dalton, Lewisburg, TN
Danny Ray Davis, Shelbyville, TN
Boyd Melton, Shelbyville, TN
Mack Motes, Shelbyville, TN
Clay Myers, Pikesville, TN
Mike Pemberton, Woodbury, TN
Ronnie E. Sapp, Pikesville, TN
Willard Templeton, Manchester, TN
Sammy Woodward, Petersburg, TN

(f) Walking Horse Owners' Association of America, Murfreesboro, TN 37133-2397.
Licensed DQP's:

CALIFORNIA

Steve Herrera, Rowland Heights, CA
Jan Holshevnikoff, Windsor, CA
William Kellerman, Napa, CA
Robert M. Lauer, Jr., El Cajon, CA
Yvonne Smith, Sacramento, CA

KENTUCKY

Nolan Benton, Richmond, KY
Ray Burton, Waynesburg, KY
Gene Cammack, New Liberty, KY
Harry Chaffin, Catlettsburg, KY
Eddie Ray Davis, Nicholasville, KY
Darrell Owens, Brodhead, KY
Harlan Pennington, Paris, KY
Romie Sanders, Brownsville, KY
Vernon Shearer, Mt. Sterling, KY
Tommy Willett, Tompkinsville, KY
Johnnie Zeller, Eubank, KY

MARYLAND

Robert Davenport, Clear Spring, MD

NORTH CAROLINA

G.K. Mease, Marion, NC

OHIO

Johnny Black, Mt. Orab, OH
Jeanne Davies, Loveland, OH

TENNESSEE

Ricky DeBoard, Pikeville, TN
Jesse Dotson, Jr., Thompson Station, TN
Phil Jones, Franklin, TN
William Roberts, Friendsville, TN
C.D. "Bud" Varnadore, Lenoir City, TN
Harold White, Franklin, TN

VIRGINIA

Joe Buehren, Rockville, VA
William Edwards, Blackwater, VA
James Fields, Lebanon, VA

WEST VIRGINIA

E.J. Parsons, Ripley, WV
Ricky Rutledge, Tornado, WV
James Singleton, Point Pleasant, WV

WISCONSIN

Charles Sears, Milwaukee, WI
John Wison, Helensville, WI

(g) Western International Walking Horse Association, Spokane, WA 99207.
Licensed DQP's:

WASHINGTON

Ross Fox, Rochester, WA
Lenee Y. Gilbert, Auburn, WA
Dennis Izzi, Enumclaw, WA
Ron Long, Winlock, WA
Sue Long, Winlock, WA
Merlyn W. Longmire, Sumner, WA
Kirk Peters, Auburn, WA
Irvin Steward, Enumclaw, WA
Vivian Steward, Enumclaw, WA
Davie Viet, Issaquah, WA

Done in Washington, DC, this 26th day of February 1990.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-4694 Filed 2-28-90; 8:45 am]
BILLING CODE 3410-34-M

Federal Grain Inspection Service

Designation Renewal of the Alton (MO), Grand Forks (ND), and McCrea (IA) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Thomas P. Russell dba Alton Grain Inspection Department (Alton), Robert J. Bohlman dba Grand Forks Grain Inspection Department (Grand Forks), and John R. McCrea dba John R. McCrea Agency (McCrea), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: April 1, 1990.

ADDRESSES: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building,

P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that the designations of Alton, Grand Forks and McCrea terminate on March 31, 1990, and requested applications for official agency designation to provide official services within specified geographic areas in the October 4, 1989, **Federal Register** (54 FR 40901). Applications were to be postmarked by November 3, 1989. Alton, Grand Forks and McCrea were the only applicants for designation in their areas and each applied for designation in the entire area currently assigned to that agency. The Service announced the applicant names in the December 1, 1989, **Federal Register** (54 FR 49784) and requested comments on the applicants for designation. Comments were to be postmarked by January 16, 1990. No comments were received.

The Service evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and in accordance with Section 7(f)(1)(B), determined that Alton, Grand Forks and McCrea are able to provide official services in the geographic area for which the Service is renewing their designations. Effective April 1, 1990, and terminating March 31, 1993, Alton, Grand Forks and McCrea are designated to provide official inspection services in their specified geographic areas as previously described in the October 4 **Federal Register**.

Interested persons may obtain official services by contacting the agencies at the following telephone numbers: Alton at (618) 462–3125, Grand Forks at (701) 772–0151 and McCrea at (319) 242–2073.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: February 21, 1990.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 90–4518 Filed 2–28–90; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on the Designation Applicants in the Geographic Area Currently Assigned to Barton (KY) and North Dakota (ND) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to the J. W. Barton Grain Inspection Service, Inc. (Barton), and North Dakota Grain Inspection Service, Inc. (North Dakota).

DATES: Comments must be postmarked on or before April 16, 1990.

ADDRESSES: Comments must be submitted in writing to Paul Marsden, RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [PMARSDEN/FGIS/USDA] telemail.

Telex users may respond as follows: TO: Paul Marsden, TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul Marsden, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the January 2, 1990, **Federal Register** (55 FR 43). Applications were to be postmarked by February 1, 1990. Barton and North Dakota were the only applicants for designation in those areas, and each applied for the entire area currently assigned to that agency. Barton also applied to have weighing services added to it's current designation. Barton met the criteria for providing official weighing services and its current designation was amended to reflect this action effective February 6, 1990.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 21, 1990.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 90–4519 Filed 2–28–90; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the Geographic Areas Currently Assigned to Central Iowa (IA), and the States of Maine (ME) and Montana (MT)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic areas currently assigned to the specified agencies. The official agencies are Central Iowa Grain Inspection Service, Inc. (Central Iowa), the Maine Department of Agriculture, Food and Rural Resources (Maine) and the Montana Department of Agriculture (Montana).

DATES: Applications must be postmarked on or before April 2, 1990.

ADDRESSES: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Central Iowa, located at 125 S.E. 18th Street, Des Moines, IA 50306, Maine located at State House Station #28, Augusta, ME 04333, and Montana located at Agriculture/Livestock Bldg. Capitol Station, Helena, MT 59620, were designated under the Act on November 1, 1987, as official agencies, to provide official inspection services.

The designation of each of these official agencies terminates on August 31, 1990. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Central Iowa, in the State of Iowa, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by U.S. Route 30 east to N44; N44 south to E53; E53 east to U.S. Route 30; U.S. Route 30 east to the Boone County line; the western Boone County line north to E18; E18 east to U.S. Route 169; U.S. Route 169 north to the Boone County line; the northern Boone County line; the western Hamilton County line north to U.S. Route 20; U.S. Route 20 east to R38; R38 north to the Hamilton County line; the northern Hamilton County line east to Interstate 35; Interstate 35 northeast to C55; C55 east to S41; S41 north to State Route 3; State Route 3 east to U.S. Route 65; U.S. Route 65 north to C25; C25 east to S56; S56 north to C23; C23 east to T47; T47 south to C33; C33 east to T64; T64 north to B60; B60 east to U.S. Route 218; U.S. Route 218 south to State Route 3; State Route 3 west to the Butler County line· the eastern Butler County line; the northern Blackhawk County line east to V49;

Bounded on the East by V49 south to State Route 297; State Route 297 south to D38; D38 west to State Route 21; State Route 21 south to State Route 8; State Route 8 west to U.S. Route 63; U.S. Route 63 south to Interstate 80; Interstate 80 east to the Poweshiek County line; the eastern Poweshiek, Mahaska, Monroe, and Appanoose County lines;

Bounded on the South by the southern Appanoose, Wayne, Decatur, Ringgold, and Taylor County lines;

Bounded on the West by the western Taylor County line; the southern Montgomery County line west to State Route 48; State Route 48 north to M47; M47 north to the Montgomery County line; the northern Montgomery County line; the western Cass and Audubon County lines; the northern Audubon County line east to U.S. Route 71; U.S. Route 71 north to U.S. Route 30.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Nashua Equity Co-op, Nashua, Chickasaw County; and Plainfield Co-op, Plainfield, Bremer County (located inside McGregor Grain Inspection and Weighing Corporation, Inc.'s geographic area); and Farmers Co-op Elevator Company, Chapin, Franklin County; Hampton Farmers Co-op Company, Hampton, Franklin County; and Farmers Community Co-op, Inc., Rockwell, Cerro Gordo County (located inside D. R. Schaal Agency's geographic area).

Exceptions to Central Iowa's assigned geographic area are the following locations inside Central Iowa's geographic area which have been and will continue to be serviced by the following official agencies:

1. A.V. Tischer and Son, Inc.: Farmers Co-op Elevator, Boxholm, Boone County;
2. Fremont Grain Inspection Department, Inc.: Juergens Produce and Seed, and Farmers Grain and Lumber Company, both in Carroll, Carroll County; and
3. Omaha Grain Inspection Service, Inc.: Murren Grain, Elliot, Montgomery County; and Hemphill Feed & Grain, and Hansen Feed & Grain, both in Griswold, Cass County.

The geographic area presently assigned to Maine, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Maine.

The geographic area presently assigned to Montana, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Montana.

Interested parties, including Central Iowa, Maine, and Montana, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas are for the period beginning November 1, 1990, and ending August 31, 1993. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: February 21, 1990.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 90–4520 Filed 2–28–90; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Flathead National Forest, MT; Environmental Statements

AGENCY: Forest Service, USDA (Flathead National Forest, Flathead, Lake, Lewis and Clark, Lincoln, Missoula, and Powell Counties, State of Montana).

ACTION: Revised notice of intent to prepare an Environmental Impact Statement—Forest Plan Amendment of Open Road Density Standards. (Amendment #10).

SUMMARY: On May 15, 1989, notice was published in **Federal Register** (54 FR 20898) that an environmental impact statement would be prepared to clarify the Forest wide and management area standards on off-road vehicle use and road vehicle use. This notice revises the original notice in that it now only addresses vehicle use on roads. Also, the release dates for the DEIS and Final EIS have been changed. The Forest Service will prepare an EIS for a proposal to amend the Flathead National Forest Land and Resource Management Plan (LRMP) of January 1986. Purpose of the amendment is to establish and clarify Forest wide standards relative to managing vehicle travel on roads. The amendment will clarify assumptions, definitions and applications procedures for an average open road density standard. This EIS will tier to the direction and goals contained in the Flathead LRMP.

The Forest has done extensive issue identification and inventory on travel management over the past eighteen months. No additional formal accepted comment period is planned prior to the release of a Draft Environmental Impact Statement (DEIS).

DATES: Additional comments will be accepted until 45 days after filing of the DEIS with the Environmental Protection Agency (40 CFR 1506.10(c)). These comments will be used in preparing the DEIS or the final EIS depending on the timing of the comment. The DEIS will be filed with the Environmental Protection Agency in May 1990 and available for public review at that time.

ADDRESSES: Send written comments to Mary Peterson, Deputy Forest Supervisor, Flathead National Forest, 1935 Third Avenue East, Kalispell, MT 59901.

FOR FURTHER INFORMATION CONTACT: Paul Conrad, Travel Management Interdisciplinary team member or Mary Peterson, Deputy Forest Supervisor, Flathead National Forest, 1935 Third Avenue East, Kalispell, MT 59901.

SUPPLEMENTARY INFORMATION: The LRMP for the Flathead National Forest provides the overall guidance for travel management activities through its goals, objectives, standards and guidelines, and management area direction. Travel management involves the control of human travel on roads, trails, and Areas on the Forest. This involves placing restrictions when needed on various modes of travel during specific time periods. The mode of travel to be addressed in this proposal is motorized.

The travel management under consideration is for all Flathead National Forest Land except currently designated Wilderness Areas. The current direction relative to travel management is reflected on a map prepared in 1987 and various specific Forest Supervisor's orders and decisions.

The Chief directed the Forest to amend the LRMP in his decision rendered 8/31/88 on LRMP appeals #1467 and #1513 and clarify standards for the amount of road open at one time, particularly in habitat for threatened and endangered species.

The analysis considers a range of alternatives. One of these is a "no-action" alternative, in which no change in the current Flathead LRMP would occur. Other alternatives will examine changes to clarify the LRMP direction. The primary issues that will guide the formulation of alternatives are:

Should the average open road density standard apply arbitrarily yearlong or should it apply seasonally based on biological evaluations?

What degree of motorized use can occur on a "closed road" and still satisfy the basic objectives of the closure and ORD standard?

Should the average open road density standard be the same or varied for areas with different importance to endangered species?

The Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the Fish and Wildlife Service will review the EIS and biological evaluation and render a formal Biological Opinion of the effects on the Threatened and Endangered Species including grizzly bear, gray wolf, and bald eagle.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. vs. NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc. vs. Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages of chapters of the draft statement.

Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Flathead Forest Supervisor will be the Responsible Official.

Dated: February 22, 1990.

Jerry B. Reese,

Acting Forest Supervisor.

[FR Doc. 90-4707 Filed 2-28-90; 8:45 am]

BILLING CODE 3410-11-M

Alaska Pulp Corporation Long-Term Timber Sale, Kelp Bay Project Area; Tongass National Forest, Baranof Island, Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare and consider an Environmental Impact Statement to evaluate a proposal to make approximately 100 million board feet (MMBF) of timber volume available under the Alaska Pulp Corporation contract number 12-11-010-1545. The proposed action is road construction and timber harvesting in eight Value Comparison Units (VCU's) along South Peril Strait and in the Kelp Bay Area on Baranof Island, on the Tongass National Forest in Southeast Alaska. These eight VCU's are referred to as the Kelp Bay Project Area.

DATE: Initial comments concerning the proposal to construct roads and harvest timber in the Kelp Bay Project Area should be received in writing by March 30, 1990. Send requests for further information or written comments to Janis Burns Buyarski, Planning Team leader, USDA, Forest Service, 204 Siginaka Way, Sitka, Alaska, 99835.

SUPPLEMENTARY INFORMATION:

1. Purpose and Scope of the Decision

Providing for a continuing flow of renewable resources is the mission of the Forest Service. In addition to providing a sustained supply of wilderness, recreation, forage, wildlife, water, and fish, providing wood products to local industry is the responsibility of the USDA, Forest Service. The Kelp Bay Project Area is under consideration for timber harvesting and road construction to make timber available under the terms of the Alaska Pulp Corporation Long-term Timber Sale Contract, dated January 25, 1956.

The nature of the decision to be made is whether and how to make available timber to meet contract obligations to the Alaska Pulp Corporation from the Kelp Bay Project Area, while also providing a combination of recreation, water, wildlife, and fish, for the needs of society now and into the future. Michael A. Barton, Regional Forester, Alaska Region, will decide: (a) How much volume to make available; (b) the location and design of timber harvest units and necessary log transfer facilities; (c) the location and design of associated mainline and local road corridors; and (d) the mitigation measures and enhancement opportunities for resources beside timber.

The proposal includes timber volume and road construction activities to keep a timber sale operator in work for three to four operating seasons. This would make available for harvest approximately 100 million board feet (MMBF) of timber and include approximately 70 miles of road construction.

The geographic location is the northeast corner of Baranof Island, within Tongass Land Management Plan Management Areas C41 Rodman Bay, C42 Lake Eva, and C43 Kelp Bay and includes VCU's 293, 294, 295, 296, 297, 298, 314, and 315. The project proposal is consistent with Tongass Land Management Plan land use designation activities, falls within the Alaska Pulp Corporation Contract Area and was scheduled for entry in the 1985–86 Winter Amendment to the Forest Plan.

The project area encompasses approximately 153,291 total acres of land. Approximately 32,500 acres, or 21 percent of the Project Area, were identified by the Tongass Land Management Plan as commercial forestland scheduled for harvesting in an average 100 year time-span. Timber harvesting has occurred in all of the project VCU's, except for Lake Eva, VCU 295. Because Lake Eva, VCU 295 is designated for recreation oriented uses by the Tongass Land Management Plan, harvesting is not proposed in VCU 295. During the late 1960's and early 1970's approximately 4,460 acres, of the 32,500 acres scheduled for harvest by the Tongass Land Management Plan, were harvested. The current project proposal is to schedule for harvest the next entry, or approximately 5,000 acres of commercial forest land. If harvesting occurred as described above, approximately 23,000 acres of commercial forest land would remain in an un-managed condition.

A reasonable range of alternatives will be developed, including a "No Action" alternative. The No Action alternative would constitute not constructing roads or harvesting timber volume in the Kelp Bay Area. Since the Forest Service is responsible under the terms of the Alaska Pulp Corporation long-term timber sale contract to make volume available, these activities would have to occur in other drainages within the designated contract area if a No Action alternative were selected.

2. Scoping and Public Participation

Public Involvement is an ongoing activity, not based on a series of techniques, but rather on the interest of a variety of publics. The Notice of Intent constitutes the beginning of the scoping process which will end March 30, 1990. At the time of this notice, a scoping letter and fact sheet is being mailed to interested people, groups, and organizations. Following this initial mailing, individual contacts, meetings, and information sharing workshops will be arranged to provide opportunities for interested people, groups, and organizations to review information, and provide input throughout the Environmental Impact Statement preparation process.

3. Timeline

A draft Environmental Impact Statement is projected for issuance approximately 12 months from date of the Notice of Intent, or March 1, 1991. Issuance of the Final Environmental Impact Statement for the Kelp Bay Project Area is projected for July 31, 1991.

4. Comments

Interested publics are invited to comment.

The comment period on the draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft Environmental Impact Statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions (*Vermont Yankee Nuclear Power Corp.* vs. *NRDC*, 435 U.S. 519, 553 (1978)). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (*City of Angoon* vs. *Hodel* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* vs. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Following issuance of the Final Environmental Impact Statement, the responsible official will consider the comments, responses, environmental consequences discussed in the document(s), and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decisions and the reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

The responsible official is, Michael A. Barton, Regional Forester, Alaska Region, 709 W. 9th Street, Juneau, Alaska 99802–1628.

Dated: February 20, 1990.

Michael A. Barton,

Regional Forester, Alaska Region, R10.

[FR Doc. 90–4715 Filed 2–28–90; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB or Access Board) has scheduled a business meeting to take place from 10:00 am to 12:00 Noon, on Wednesday, March 14, 1990, at the Embassy Suites Hotel, 1250 22nd Street NW., Washington, DC.

DATES: Wednesday, March 14, 1990—10:00 am to 12:00 Noon (Business Meeting).

MATTERS TO BE CONSIDERED: Agenda items include: Approval of the January 23, 1990 Board Meeting Minutes; Executive Director's Report, Complaint

Status Report; American With Disabilities Act Update; Committee Reports; Technical Programs for FY 1990—Discretionary/Contingency Projects; Board Retreat Recommendations—Goals and Objectives; Proposed Amendments to the Ethics Regulations; Draft Guidelines for Communicating During Rulemaking; and, Accessible Meeting and Information Policy—Cost Analysis.

FOR FURTHER INFORMATION CONTACT: For information please contact Barbara A Gilley, Executive Officer, (202) 653-7834 (voice or TDD).

SUPPLEMENTARY INFORMATION: Committee meetings will be held at the same location on Tuesday, March 13, 1990 as follows: Planning and Budget Committee 9:00–11:00 am, Executive Committee 1:00–3:00 pm; and Technical Programs Committee 3:00–5:00 pm.

Lawrence W. Roffee,

Exective Director.

[FR Doc. 90–4696 Filed 3–1–90; 8:45 am]

BILLING CODE 6820–BP–M

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of a subcommittee of the Alabama Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3 p.m., on March 23, 1990, at the Law Offices, 2125 Morris Avenue, Birmingham, AL 35203. The purpose of the meeting is to identify information sources and plan for a community forum on the need for a human relations commission in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, William Barnard, or William F. Muldrow, Civil Rights Analyst of the Central Regional Division. (816) 426–5253 (TDD 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 20, 1990.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 90–4660 Filed 2–28–90; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 6–90]

Proposed Foreign-Trade Zone—Oneida County, NY (Utica Customs Port of Entry); Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400), by the County of Oneida, New York, requesting authority to establish a general-purpose foreign-trade zone at sites in the County of Oneida, New York, within the Utica Customs port of entry. It was formally filed on February 9, 1990. The applicant is authorized to make this proposal under chapter 647, Laws of New York 1988.

The proposed foreign-trade zone would consist of 5 sites (1,280 acres) within the Utica port of entry area. Site 1 (534 acres) is located at the Oneida County Airport Industrial Park, Oneida County Airport, Oriskany, New York. Site 2 (512 acres) is located at the West Rome Industrial Park, 1 Success Drive, Rome, New York. Site 3 (100 acres) is located at Boonville Industrial Park, Industrial Road, Boonville, New York. Site 4 (82 acres) is located at the Utica Business Park, Business Park Drive, Utica, New York. Site 5 (52 acres) is located at East Arterial Industrial Park, Dwyer Avenue, Utica, New York. The Oneida County Industrial Development Corporation (OCIDC) owns the Oneida County Airport Industrial Park and has agreements with the owners of the other parks to operate a zone at these sites. The zone will be used primarily for warehousing, transshipment, inspection, and repackaging activities. The operator of the project would be OCIDC.

The application contains evidence of the need for zone services to assist the County in its economic development efforts. It is anticipated that the initial zone activity would be for duty deferral on components used by producers of transportation equipment, machine tools, food processing equipment, wire/cable manufacturers, and instrument makers. The first facility to be activated would likely be the new hangar building at the Oneida County Airport Industrial Park. Approval for manufacturing activity is not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 10 Causeway Street, Boston, Massachusetts 02222–1056; and Colonel Ralph M. Danielson, District Engineer, U.S. Army Engineer District New York, Jacob K. Javits Federal Building, New York, New York 10278–0090.

As part of its investigation, the examiners committee will hold a public hearing on March 15, 1990, beginning at 9 a.m., in the First Floor Conference Room, New York State Office Building, Genesee Street, Utica, New York 13501.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by March 8, 1990. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through April 16, 1990.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations.

Oneida County Industrial Development Corporation, Terminal Building, Oneida County Airport, Oriskany, New York 13424.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Room 2835, Washington, DC 20230.

Dated: February 21, 1990

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–4676 Filed 2–28–90; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 463]

Resolution and Order Approving With Restriction the Application of the Greater Burlington Industrial Corporation for a Special-Purpose Subzone at the Food Products Manufacturing Plant of Wyeth Nutritionals, Inc., Georgia, Vermont; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a–81u), the Foreign-Trade Zones Board adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Burlington Industrial Corporation, grantee of FTZ 55, filed with the Foreign-Trade Zones Board (the Board) on January 22, 1988, and amended on June 27, 1989 (to limit the request to dairy products), requesting special-purpose subzone status for the infant food products manufacturing plant of Wyeth Nutritionals, Inc., in the Town of Georgia, Vermont, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval were given subject to a restriction requiring that all foreign dairy products admitted to the subzone be reexported, approves the application subject to the foregoing restriction.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Foreign-Trade Zones Board

Grant of Authority; To Establish a Foreign-Trade Subzone at the Wyeth Plant in Georgia, Vermont

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Burlington Industrial Corporation, grantee of Foreign-Trade Zone No. 55, has made application (filed January 22, 1988, FTZ Docket 5–88, 53 FR 3412, and amended on June 27, 1989) in due and proper form to the Board for authority to establish a special-purpose subzone at the infant food products manufacturing plant of Wyeth Nutritionals, Inc. (subsidiary of American Home Products Corporation) located in the Town of Georgia, Vermont, adjacent to the St. Albans Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest provided approval is given subject to the restrictions in the resolution accompanying this action;

Now, Therefore, in accordance with the application filed January 22, 1988, as amended on June 27, 1989, the Board hereby authorizes the establishment of a subzone at the Wyeth plant in Georgia, Vermont, designated on the records of the Board as Foreign-Trade Subzone No. 55B, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations issued thereunder, to the restriction in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC., this 22nd day of February, 1990, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Lisa B. Barry,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

[FR Doc. 90–4677 Filed 2–28–90; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–602–039]

Canned Bartlett Pears From Australia; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on canned bartlett pears from Australia. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1990.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: David Levy or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1973, the Department of Commerce ("the Department") published an antidumping finding on canned bartlett pears from Australia (38 FR 7566). The Department has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than March 31, 1990, interested parties, as defined in § 353.2(i) of the Department's

regulations, may object to the Department's internt to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by March 31, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by March 31, 1990, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: February 23, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-4673 Filed 2-28-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-002]

Chloropicrin From the People's Republic of China; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on chloropicrin from the People's Republic of China. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1990.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1984, the Department of Commerce ("the Department") published an antidumping duty order on chloropicrin from the People's Republic of China (49 FR 10691). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than March 31, 1990, interested parties, as defined in section 353.2(i) of the Department's regulations, may object to the Department's intent to revoke this antidumping order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by March 31, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by March 31, 1990, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: February 23, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-4675 Filed 2-28-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-072]

Rayon Staple Fiber From France; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on rayon staple fiber from France. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1990.

EFFECTIVE DATES: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On March 21, 1979, the Department of Commerce ("the Department") published an antidumping finding on rayon staple fiber from France (44 FR 45467). The Department has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than March 31, 1990, interested parties, as defined in § 353.2(i) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by March 31, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by March 31, 1990, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: February 23, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-4674 Filed 2-28-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-401]

Certain Apparel From Thailand; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain apparel from Thailand. Interested parties who object to this revocation must submit their comments in writing no later than March 31, 1990.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1985, the Department of Commerce ("the Department") published a countervailing duty order on certain apparel from Thailand (48 FR 9818). The Department has not received a request to conduct an administrative review of the countervailing duty order on certain apparel from Thailand for four consecutive annual anniversary months. This is the fifth anniversary.

The Department may revoke an order if the Secretary of Commerce concludes that an order is no longer of interest to interested parties. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than March 31, 1990, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by March 31, 1990, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: February 23, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 90–4669 Filed 2–28–90; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-001]

Ferrochrome From South Africa; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on ferrochrome from South Africa. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1990.

EFFECTIVE DATE: February 28, 1990.

FOR FURTHER INFORMATION CONTACT: Britt Doughtie or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1981, the Department of Commerce ("the Department") published a countervailing duty order on ferrochrome from South Africa (46 FR 21155). The Department has not received a request to conduct an administrative review of the countervailing duty order on ferrochrome from South Africa for four consecutive annual anniversary months. This is the fifth anniversary.

The Department may revoke an order if the Secretary of Commerce concludes that an order is no longer of interest to interested parties. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than March 31, 1990, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by March 31, 1990, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: February 23, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90–4671 Filed 2–28–90; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-005]

Frozen Concentrated Orange Juice; Intent To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its intent to terminate the suspended courtervailing duty investigation on frozen concentrated orange juice from Brazil. Interested parties who object to this termination must submit their comments in writing not later than March 31, 1990.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1983, the Department of Commerce ("the Department") published an agreement suspending the countervailing duty investigation on frozen concentrated orange juice from Brazil (48 FR 8839).

The Department has not received a request to conduct an administrative review of the agreement suspending the countervailing duty investigation on frozen concentrated orange juice from Brazil for more than four consecutive annual anniversary months.

The Department may terminate a suspended investigation if the Secretary of Commerce concludes that a suspension agreement is no longer of interest to interested parties. Accordingly, as required by 19 CFR 355.25, the Department is notifying the public of its intent to terminate this suspended investigation.

Opportunity to Object

Not later than March 31, 1990, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to terminate this suspended investigation.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to terminate by March 31, 1990, we shall conclude that the suspended investigation is no longer of interest to interested parties and shall proceed with the termination.

This notice is in accordance with § 355.25(d) of the Department's regulations.

Dated: February 23, 1990.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-4672 Filed 2-28-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-402]

Certain Textile Mill Products and Apparel From Peru; Intent To Revoke Countervailing Duty Orders

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty orders.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty orders on certain textile mill products and apparel from Peru. Interested parties who object to either revocation must submit their comments in writing no later than March 31, 1990.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1985, the Department of Commerce ("the Department") published countervailing duty orders on certain textile mill products and apparel from Peru (50 FR 9871).

The Department has not received a request to conduct an administrative review of either the countervailing duty order on textile mill products or apparel from Peru for four consecutive annual anniversary months. This is the fifth anniversary.

The Department may revoke an order if the Secretary of Commerce concludes that an order is no longer of interest to interested parties. Accordingly, as required by section 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke these orders.

Opportunity to Object

Not later than March 31, 1990, interested parties, as defined in section 355.2(i) of the Department's regulations, may object to the Department's intent to revoke these countervailing duty orders.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by March 31, 1990, we shall conclude that these orders are no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with the Department's regulations, 19 CFR 355.25(d).

Dated: February 23, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 90-4668 Filed 2-28-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-404]

Certain Textile Mill Products From Argentina Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Impact Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain textile mill products from Argentina. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1990.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1985, the Department of Commerce ("the Department") published the countervailing duty orders on certain textile mill products and apparel from Argentina (50 FR 9846). The Department has not received a request to conduct an administrative review of the countervailing duty order on certain textile mill products from Argentina for four consecutive annual anniversary months. This is the fifth anniversary. This intent to revoke does not affect the countervailing duty order on certain apparel from Argentina.

The Department may revoke an order if the Secretary of Commerce concludes that an order is no longer of interest to interested parties. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than March 31, 1990, interested parties, as defined in section 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administtrative review or object to the Department's intent to revoke by March 31, 1990, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: February 23, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 90-4667 Filed 2-28-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-542-401]

Certain Textile Mill Products and Apparel From Sri Lanka Intent To Revoke Countervailing Duty Orders

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty orders.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty orders on certain textile mill products and apparel from Sri Lanka. Interested parties who object to these revocations must submit their comments in writing not later than March 31, 1990.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Paul McGarr, Office

of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:.

Background

On March 12, 1985, the Department of Commerce ("the Department") published countervailing duty orders on certain textile mill products and apparel from Sri Lanka (50 FR 9826). The Department has not received requests to conduct administrative reviews of the countervailing duty orders on certain textile mill products and apparel from Sri Lanka for four consecutive annual anniversary months. This is the fifth anniversary.

The Department may revoke an order if the Secretary of Commerce concludes that an order is no longer of interest to interested parties. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke these orders.

Opportunity to Object

Not later than March 31, 1990, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke these countervailing duty orders.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by March 31, 1990, we shall conclude that the orders are no longer of interest to interested parties and shall proceed with the revocations.

This notice is in accordance with 19 CFR 355.25(d).

Dated: February 23, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90–4670 Filed 2–28–90; 8:45 am]

BILLING CODE 3510–DS–M

USDA–ARS, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Comment: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes of each is intended to be used, was being manufactured in the United States at the time the instrument was ordered.

Docket Number: 88–207R. *Applicant:* USDA–ARS, Northern Regional Research Center, Peoria, IL 61604. *Instrument:* NMR Spectrometer, Model MSL 300 (System D). *Manufacturer:* Bruker Analytische Messtechnik, West Germany. *Intended Use:* See notice at 53 FR 22685, June 17, 1988. *Order Date:* September 11, 1987. *Reasons:* The foreign instrument provides CRAMPS capability and superior CP/MAS performance. *Advice Submitted By:* National Institutes of Health, January 4, 1990.

Docket Number: 89–063R. *Applicant:* Michigan State University, East Lansing, MI 48824–1322. *Instrument:* Rotating Anode X-Ray Generator. *Manufacturer:* Rigaku Corporation, Japan. *Intended Use:* See notice at 54 FR 7972, February 24, 1989. *Order Date:* November 1, 1988. *Reasons for This Decision:* The foreign instrument provides a beam power density of 12.0 kW with a focal spot size of 0.1 x 1.0 mm. *Advice Submitted By:* National Institutes of Health, January 1, 1990.

The National Institutes of Health advices that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to either of the foreign instruments for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to either of the foreign instruments being manufactured at the time it was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–4680 Filed 2–28–90; 8:45 am]

BILLING CODE 3510–DS–M

NASA, Lewis Research Center; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 89–256. *Applicant:* NASA, Lewis Research Center, Cleveland, OH 44135. *Instrument:* Two (2) Scanning Electron Microscopes, Model JSM–840A. *Manufacturer:* JEOL, Inc., Japan. *Intended Use:* See notice at 54 FR 47703, November 16, 1989.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (September 27, 1989).

Reasons: The foreign instrument provides a combination of resolution and sensitivity in multiple wavelength spectrometers.

The capability is pertinent to the applicant's intended purpose and we know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–4678 Filed 2–28–90; 8:45 am]

BILLING CODE 3510–DS–M

National Institutes of Health; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Education, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–044R. *Applicant:* National Institutes of Health, Bethesda, MD 20892. *Instrument:* Nuclear Magnetic Resonance Spectrometer, Model AM 600. *Manufacturer:* Bruker Instruments, West Germany. *Intended Use:* See notice at 52 FR 48851, December 28, 1987.

Comments: None received.

Decision: Approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as it is intended to be used, could have been made available to the applicant without excessive delay within the meaning of subsection 301.5(d)(4) of the

regulations at the time the foreign instrument was ordered (June 30, 1987).

Reasons: Subsection 301.5(d)(4) of the regulations provides as follows:

Excessive delivery time. Duty-free entry of the instrument shall be considered justified without regard to whether there is being manufactured in the United States an instrument of equivalent scientific value for the intended purposes if excessive delivery time for the domestic instrument would seriously impair the accomplishment of the applicant's intended purposes. * * * In determining whether the differences in delivery times cited by the applicant justifies duty-free entry on the basis of excessive delivery time, the Director shall take into account (A) the normal commercial practice applicable to the production of the general category of instrument involved; (B) the efforts made by the applicant to secure delivery of the instruments (both foreign and domestic) in the shortest possible time; and (C) such other factors as the Director finds relevant under the circumstances of a particular case.

On April 29, 1987 the applicant requested proposals for the NMR spectrometer and specified a delivery deadline of December 31, 1987. The applicant stressed that time was of the essence since the NMR equipment was the key element in a top priority research program to develop effective therapy for AIDS and other viral diseases. Minimal delay was vital since expert researchers in this area had been recruited and scarce space and facilities had been committed to this initiative.

Bruker had already developed a working prototype 600-MHz NMR which the applicant inspected and ran test samples with in April, 1987. Two U.S. manufacturers, General Electric Co. and Varian Associates, Inc., submitted bids on a "best effort" basis since their own versions of a 600-Mz system were still under development. At the time of purchase, June 30, 1987, the applicant believed that it was highly unlikely that the U.S. manufacturers could achieve timely delivery since the necessary 14.1 tesla magnets would not be available to them from the sole supplier (Oxford Instruments) until late that fall. It anticipated that installation and testing of the magnets would take about a month, that the complex procedure of developing detection probes could not begin until the magnets were ready and that a parallel effort would have to be devoted to developing a highly sophisticated, vibration-free hydraulic lift for the one-ton magnet system.

The applicant has stated that the Bruker (Model AM-600) NMR was delivered on December 3, 1987 and fully operational by January 5, 1988. The first research results were obtained in April and submitted for publication by June. The first U.S. made 600-MHz NMR was demonstrated to customers in January, 1988 and no such system was actually delivered until January, 1989. We conclude that it is extremely unlikely that the applicant's delivery deadline could have been met and that the applicant would have experienced significant delays in its research program had it opted to acquire a domestic NMR.

Accordingly, we find that the domestic manufacturers' inability to deliver a comparable instrument within the time required by the applicant's project requirements amount to "excessive delivery" within the meaning of 301.5(d)(4) and would have seriously impaired the accomplishment of the applicant's intended purposes.

In addition to the foregoing considerations, the foreign instrument provides: (1) A 24-bit computer word length, (2) a 16-bit analog to digital converter, (3) decoupler power of 40 watts, (4) timing resolution of 25 nanoseconds in the process controller and (5) superior indirect detection, selective excitation, and complex pulse programming capabilities.

The National Institute of Standards and Technology in its memoranda dated March 22, 1988 and October 25, 1989 advises that (1) the capabilities of the foreign instrument cited above are pertinent to the applicant's intended purposes, (2) excessive delivery time on the part of the domestic manufacturers was a pertinent consideration and (3) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use at the time it was ordered.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-4679 Filed 2-28-90; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Columbia, SC

February 23, 1990.

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of 07/1/90 to 06/30/91. The MBDC will operate in the Columbia, South Carolina, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications April 5, 1990. Applications must be postmarked on or before April 5, 1990.

ADDRESSES: Atlanta Regional Office, Minority Business Development Agency,

U.S. Department of Commerce, suite 505, Atlanta, Georgia 30309, 404/347–3438.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., suite 505, Atlanta, Georgia, Thursday, March 22, 1990, at 9 a.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 23, 1990.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 90–4639 Filed 2–28–90; 8:45 am]

BILLING CODE 3510–21–M

National Telecommunications and Information Administration

Government and Industry Open Forum on High Frequency Radio

AGENCY: Institute of Telecommunication Sciences (ITS), National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of open forum meeting; request for presentations.

SUMMARY: The National Communication Systems (NCS) and the U.S. Army Information Systems Command are jointly sponsoring an Industry Forum on high frequency (HF) radio. The (ITS), acting for NCS, will be the forum moderator. This forum will be held at MITRE Corporation, Hayes Building, south entrance auditorium at 7525 Colshire Boulevard, McLean, Virginia 22102. The focus of the forum will be upon engineering aspects of automatic link establishment (ALE), and associated modem and anti-jam (AJ) functions in a single radio system. The purpose of this forum is to allow industry to exchange ideas and develop recommendations to the Government in the areas of adaptive HF radio, HF modems, and HF AJ features. Both Government and industry representatives are invited to participate in this forum. Industry representatives are invited to provide a presentation on one or more of the following areas of interest: (1) HF ALE, (2) HF modems, (3) HF AJ. Presentations will be limited to 20 minutes. A slide projector and an overhead projector will be available. Presenters are requested to provide sufficient copies of their presentation material for the estimated 60 attendees. Due to the limited seating capacity in the meeting room, organizations are requested to limit their participation to not more than three people. Please provide the title(s) of your presentation and the names of your participants to NTIA/ITS.N1 as soon as possible.

DATES: The Open Forum will be held on March 6, 7, and 8, 1990, beginning at 8 a.m. each day. Attendees must be identified to NTIA by close of business March 2, 1990.

ADDRESSES: Prospective attendees and participants must be identified to: NTIA/ITS.N1, attention Karen Henderson, 325 Broadway, Boulder, Colorado 80303–3328. Telephone (303) 497–5116 or FTS 320–5116. FAX: (303) 497–6892 or 5993.

FOR FURTHER INFORMATION CONTACT: Billy B. Bateman or Eugene Kirlin at the U.S. Army Information Systems Command, telephone (602) 538–7848 or AUTOVON 879–7848. If there is a need to discuss classified subjects separately at this forum, contact Fred Leiner, MITRE Corporation, telephone (703) 883–6998.

SUPPLEMENTARY INFORMATION: The Open Forum will be unclassified. The following are recommended topics that are of concern to the HF community:

a. How do you view near-term system usage of the standard (ALE, Modem, AJ) in system development?

b. What are your current and projected plans for test of HF radio equipment built to these standards?

c. What do you view as critical interfaces?

d. What are your ideas on a retrofit market with current receivers/transmitters?

e. What are your ideas on new systems and designs?

Dated: February 26, 1990.

Robert T. Adair,

Chief, Advanced Networks Analysis Group.

[FR Doc. 90–4797 Filed 2–28–90; 8:45 am]

BILLING CODE 3510–60–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 26, 1990.

The USAF Scientific Advisory Board Ad Hoc Committee Summer Study on Technology Options and Concepts for Defeating Enemy Air Defenses will meet on PC 16 Mar 90 from 8:00 a.m. to 5:00 p.m. at the National Security Agency, Office of the Associate Deputy Director for Operations (Military Support), Fort George G. Meade, MD 20755–6000.

The purpose of this meeting will be to receive briefings on NSA in the Electronic Combat arena. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–4697 Filed 2–28–90; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Program for Qualifying DOD Freight Motor Carriers

AGENCY: Military Traffic Management Command (MTMC), Department of the Army.

ACTION: Final notice.

SUMMARY: Item was previously published in the issue of the **Federal Register** (53 FR17970) on Thursday, May 19, 1988, (54 FR27667) and Friday, June 30, 1989. Subject to certain exceptions, the program will apply to all freight motor carriers intending to participate in transportation of all freight administered by MTMC's Directorate of Inland Traffic (except used household goods, hazardous, or secret materials, and sensitive weapons and munitions). Carriers without rates on file as of the effective date will have to qualify prior to MTMC's acceptance of their service offers. Carriers with rates on file as of the effective date will be required to submit data to meet these qualifications when requested by MTMC. All carriers will be required to meet these qualification standards within 2 years of the implementation of this program.

Carriers interested in qualifying and remaining qualified will submit the data described below to the appropriate area command (Bayonne, NJ or Oakland, CA) based on the location of the carrier's headquarters. The area command will schedule a meeting with the carrier, if necessary, to clarify any qualification elements and also receive guidance on how to do business with the DOD. The area command will then evaluate the data to determine whether the carrier has the equipment, facilities, personnel and finances necessary to handle the

carrier's proposed scope of operations. The area commands will then forward the application to HQMTMC for approval.

If the carrier is approved and signs the agreement, HQMTMC will then accept (or in the case of existing carriers, continue to accept) tenders, tariffs or similar rate submissions. Carriers that are disapproved will be notified of the reasons for disapproval and may reapply for approval once the problems have been corrected.

DATES: Effective on April 2, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Rose Sharpe or Mr. Rick Wirtz at (703) 756–1062.

SUPPLEMENTARY INFORMATION: MTMC's qualification criteria is as follows:

a. Safety Ratings. Carrier will not have an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and if it is an intrastate motor carrier, with the appropriate state agency. Carriers with "conditional" or "insufficient information" ratings may be used to transport DOD general commodities provided that such carriers certify in writing that they are now in full compliance with Department of Transportation safety requirements.

b. Operating Authorities. Carriers will submit copies of all certificates authorizing operations as a common carrier (interstate and intrastate) needed to transport DOD traffic.

c. Insurance—Public Liability and Cargo.

(1) Public Liability. Motor carriers will submit proof of their public liability insurance to MTMC on a certificate of insurance form issued by the insurance company. Expiration dates will not be reflected on the certificate, the policy must be continuous until cancelled. However, the deductible portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating of "A" or better in Best's Insurance Guide. The certificate holder block of the form will indicate that HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MT–INFF, will be notified, in writing, 30 days in advance of any change or cancellation. Self-Insurance will not be accepted. The public liability requirements are specified by 49 CFR 387.9 and are summarized as follows based on the commodities transported:

Property (nonhazardous)	$ 750,000
Oil; hazardous waste, materials and substances not in bulk	1,000,000

(2) Cargo. Motor carriers will be required to have their insurance company provide proof of cargo insurance to MTMC on a certificate of insurance form. Expiration dates will not be reflected on the certificate; the policy must be continuous until cancelled. However, the deductible portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating of "A" or better in Best's Insurance Guide. The certificate holder block of the form will indicate that HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MT–INFF, will be notified, in writing, 30 days in advance of any change or cancellation. DOD's minimum cargo insurance requirements are $150,000 for loss and damage of Government freight and/or $20,000 per vehicle transported (e.g., automobile transporters or vehicles in haulaway service) in the form of certificate(s) of insurance. Self-Insurance will not be accepted.

d. Financial Records. Motor carriers must furnish financial statements certified by the company Chief Executive Officer, President or Owner. These financial statements must include company certified balance sheets and income statements for the last 3 taxable years. Motor carriers in existence less than 3 years, but more than 12 months, must provide company certified copies of all balance sheets and income statements from the date business was commenced. Carriers in business less than 12 months must provide a company certified balance sheet showing all assets and liabilities. Motor carriers must furnish financial data at MTMC's discretion when considered necessary to assure satisfactory performance and avoidance of motor carrier financial problems. This financial data includes, but is not limited to the following:

—Company certified financial statements
—CPA review (including footnotes) of financial statements
—CPA audit and opinion (including footnotes) of financial statements

All carriers must also state the extent of their financial interests in other transportation companies or their affiliation with any person or firm holding interests in other transportation companies to include:

(1) majority or minority ownership
(2) Familiar relationships
(3) Voting of securities
(4) Common directors, officers and/or stockholders
(5) Voting trusts
(6) Holding trusts
(7) Associated companies
(8) Contract or department relationships

This information will be used to determine if common financial and administrative control exists with other companies, or if individuals or associated companies are affiliated with those who have been debarred by the Government.

e. Carriers will provide the following information:

(1) A listing of company's officers with their title.

(2) A listing of the company's owners and the percentage of ownership of each.

(3) Company background and history, including the year the company was formed.

(4) A list, by type and quantity, of all owned and/or leased equipment. MTMC will not approve any motor carrier that does not own and/or have permanent leases for equipment.

(5) The number of personnel employed, to include company drivers and number of drivers under lease. A motor carrier must be able to show it has a minimum personnel force in order to operate effectively.

(6) A list of all terminal locations including the street address and telephone numbers, and descriptions of the terminal facilities.

(7) Three reference letters from shippers served during the previous 12 months.

(8) Proposed services by type of service, traffic lane, or geographical area. MTMC will review equipment inventories and permanent lease agreements in relationship to proposed service. In those instances where a carrier's equipment inventory indicates they cannot provide the proposed service, MTMC will request a meeting with the carrier to review proposed service.

(9) Copies of driver hiring, screening, and training procedures.

(10) Disadvantaged (Minority) and women-owned business certification (if applicable).

f. Performance Bond. Motor carriers will provide HQMTMC with a Performance Bond. The bond must be issued by a surety company listed in the Fiscal Service, Treasury Department Circular No. 570. The sum of the bond shall be no less then $100,000. The bond must be continuous until cancelled. HQMTMC will be notified, in writing, 30 days in advance of any change or cancellation. The Performance Bond secures performance and fulfullment of the carrier obligation. It will cover default, abandoned shipments, inability to perform, bankruptcy and overcharges.

g. Carriers meeting the above qualification requirements will be

required to sign the following agreement:

Basic Agreement Between the Military Traffic Management Command and Motor Common Carriers for Approval To Transport General Commodities for the Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of _____, thereinafter called the carrier, as a prerequisite for approval to transport general commodities for the account of the Department of Defense (DOD) and the Military Traffic Management Command (MTMC), hereinafter called the Government, agrees to comply with all requirements and conditions as set forth in this Agreement. This Agreement governs the transportation of all DOD freight administered by the Directorate of Inland Traffic, MTMC (except used household goods, hazardous or secret materials, and sensitive weapons and munitions). Noncompliance by the carrier with any provision of this Agrement may result in MTMC taking action against the carrier under the Carrier Performance Program, governed by MTMCR 15–1, and terminating approval to participate in this traffic. If the carrier's approval is terminated, the carrier may be disqualified from further participation in any DOD freight traffic.

2. Approval and Revocation.

a. Carrier understands that its initial approval and retention of approval are contingent upon establishing and maintaining, to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resources include the equipment, personnel, facilities, and finances to handle the traffic anticipated by DOD/MTMC under the carrier's proposed scope of operations in accordance with the service requirements of the shipper.

b. The carrier understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. The carrier further understands that it is not authorized to submit tenders for shipments requiring a Transportation Protective Service until it has served DOD in an approved status for 12 continuous months.

c. In addition to the initial evaluation, the carrier agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this agreement to confirm continued eligibility.

d. The carrier certifies that neither the owners, company, nor any affiliation or subsidiary thereof are currently debarred or suspended from doing business with DOD.

3. Lawful Performance. Transportation for the DOD will be performed in accordance with all applicable Federal, State, municipal, and other local laws and regulations. No fines, charges, or assessments for overload vehicles or other violations of applicable laws and regulations will be passed to or be paid by any agency of the Federal Government.

4. Operating Authority. Carrier will maintain valid motor common carrier operating certificates for its scope of operations. Any carrier found to be, in fact, involved in the brokerage (as defined by the ICC), of DOD freight traffic will have its approval revoked.

5. Insurance.

a. Minimum public liability insurance requirements are prescribed in title 49 of the Code of Federal Regulations, Section 387.9. Carriers will ensure that the Interstate Commerce Commission is provided proof of their public liability insurance, in the form of a BMC 91 or 91–X, or MCS 90, in accordance with sections 29 and 30 of the Motor Carrier Act of 1980. Further, the motor carrier will provide MTMC with a certificate of insurance form. The certificate holder block of the form will indicate that HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MT–INFF, will be notified in writing, 30 days in advance of any change or cancellation. Expiration dates will not be reflected on the certificate, policy must be continuous until cancelled. However, the deductable portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating of "A" or better in Best's Insurance Guide. Self-Insurance will not be accepted.

b. The carrier will also file with MTMC proof of $150,000 per incident minimum cargo insurance for loss and damage of Government freight. If transporting automobiles or vehicles in haulaway service using automobile transporters or trailers, the carrier will file proof of minimum cargo insurance of $20,000 per vehicle.

c. The insurance, carried in the name of the carrier, will be in force at all times while this Agreement is in effect or until such time as the carrier cancels all tenders. The carrier will ensure that the policies include a provision requiring the insurer to notify HQMTMC in writing, 30 days prior to any change or cancellation of the policies. Proof of insurance must also be on file with HQMTMC prior to any performance of service by the carrier. Changes, renewals and cancellation notices must also be sent to HQMTMC at the address in paragraph 19. Self-Insurance will not be accepted. *This requirement applies to both interstate and intrastate carriers.* Carrier's insurance policy(s) must cover all equipment used to transport DOD freight.

6. Performance Bond. Carriers will provide HQMTMC with an Performance Bond at no cost to the Government. The bond secures performance and fulfillment of the carrier obligation. It will cover default, abandoned shipments, inability to perform, bankruptcy, overcharges, and reprocurement costs. The bond must be issued by a surety company listed in the Fiscal Service, Treasury Department Circular No. 570. The penal sum of the bond shall be no less than $100,000. The bond must be completed on the form provided by HQMTMC. The bond will be continuous until cancelled. HQMTMC will be notified, in writing, 30 days in advance of any change or cancellation.

7. Safety.

a. Carrier will not have an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and, if it is an intrastate motor carrier, with the appropriate state agency. The carrier further agrees to allow unannounced safety inspections of its facilities, terminals, equipment, employees, operations, and procedures by DOD civilian, military, or contract employees. These inspections may include in transit surveillance of vehicles and drivers. Carrier will provide evidence of an active driver safety training and evaluation program that fulfills the requirements set forth at 49 CFR 390–396. Inspection of carrier equipment, driver's records, route plans, and inspection reports will be allowed during pickup and delivery of shipments and in coordination with police or other authorities while in transit. Upon request, the carrier agrees to furnish sufficient information to permit MTMC to verify or inspect carrier and driver records.

b. The carrier will have, in place, a company-wide safety management program. Carrier safety programs will comply with applicable Federal, State and local statutes or requirements. Safety programs at the company wide or terminal level may be subject to evaluation by a DOD representative.

c. The carrier will notify the consignor and consignee named on the Government bill of lading (GBL) or Commercial bill of lading (CBL) of cargo loss, damage, or unusual delay. Information reported will include origin/destination, GBL/CBL number, shipping

paper information, time and place of occurrence, and other pertinent accident details. When requested, carrier will furnish MTMC a copy of accident reports submitted to Department of Transportation on Form MCS 50–T (Property).

8. Driver Requirements. Any driver used by carriers to transport DOD freight must possess a valid driver's license issued by his or her state of domicile. Drivers must have, at a minimum, 1 year of experience driving equipment similar to that used to transport DOD freight, or have proof of graduation from an accredited motor carrier driving school.

9. Equipment. The carrier is prohibited from using trip-leased equipment or drivers, except upon prior approval from HQMTMC. *Leases of less than 30 days* are considered trip leases. In order to triplease, a carrier must apply for approval under MTMC's triplease program.

10. Shipment. The carrier agrees to provide, at no additional cost to the government, the status of any shipment within 24 hours after an inquiry is made. Further, the carrier will not divulge any information to unauthorized persons concerning the nature and movement of any DOD shipment.

11. Documentation.

a. Carrier agrees to accept GBLs and CBLs on which freight charges will be paid by the Government, and be bound by all terms and conditions stated on SF 1103 regardless of the type of bill of lading tendered.

b. The carrier will comply with the documentation prelodge procedures in effect at Military Ocean Terminals when cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to delivery of the cargo at the terminal.) Instructions will be provided by the consignor to furnish certain data at least 24 hours in advance of cargo delivery to the terminal.

12. Loss or Damage. The carrier will be liable for loss or damage to cargo in accordance with the provisions of Title 49, United States Code, Section 11707 (the Carmack Amendment to the Interstate Commerce Act). Carrier agrees to promptly settle uncontested claims for loss or damage.

13. Standard Tender of Service.

a. The carrier will comply with the preparation and filing instructions and applicable freight traffic rules publications issued by MTMC. Carrier understands that MTMC will reject tenders not in compliance with these instructions.

b. Carrier will provide a street address where the company office is located in lieu of a post office box number. Carrier will provide the address prior to or in conjunction with submission of any tenders or other rate schedules. The carrier will also advise MTMC of any change in address prior to the effective date of the change. Failure to do so is grounds to discontinue use of the carrier.

c. Carrier understands that tenders inadvertently accepted and distributed for use and not in compliance with this agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364–R), or the applicable MTMC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal or nonuse until corrections are made. The issuing carrier will be advised when tenders are removed under these circumstances.

14. Rates. Carrier agrees to transport Government shipments at its lowest applicable rate whether or not the rate tender is referenced on the GBL/CBL.

15. Carrier Performance. Carrier's equipment, performance, and standards of service will conform with its obligations under Federal, State, and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation and this Agreement. The carrier fully understands its obligation to remain current in its knowledge of service standards. The carrier accepts the Government's right to revoke approval, declare ineligible, nonuse, or disqualify the carrier for unsatisfactory service subsequent to approval or for any other operating deficiency, or for noncompliance with terms of the Agreement or terms of negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs/tenders. Rules governing the Carrier Performance Program are found in MTMCR 15–1 and AR 55–355. If a carrier is removed or disqualified for 6 months or more, it will have to be requalified.

16. General Provisions. The carrier agrees to have a valid Standard Carrier Alpha Code (SCAC) and use it on all DOD billing documents, and correspondence pertaining to shipment of freight. If different operating divisions of a carrier desire to file tenders with the DOD, the carrier agrees to maintain a separate agreement and SCAC for each division.

17. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of acknowledgement until terminated. Termination is effective upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The carrier will immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and carrier name.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for any other types of service and/or commodities.

19. Inquiries. Inquiries may be referred to: Commander, Military Traffic Management Command, Attention: MT–INFF, 5611 Columbia Pike, Falls Church, VA 22041–5050.

20. Carrier Acknowledgement and Acceptance. The certifying carrier official will ensure all company officials and employees are familiar with the requirements of this Agreement and are in full compliance with the applicable provisions contained herein.

Any information found to be falsely represented in the Motor Carrier Qualification Form, the attachments, or during the qualification procedures shall be grounds for automatic cancellation of this agreement and immediate nonuse of the carrier, the affiliated companies, divisions and entities.

I (typed name and title of carrier official) understand the requirements of this agreement and on behalf of (typed name of carrier) agree to comply with the terms and conditions contained herein.

Name of carrier _____

_____

Signature of Official

Carrier address _____

_____

Date _____

_____

Telephone No. ( ) _____

24 hr emergency No. ( ) _____

SCAC _____

Interstate operating authority certificate number–MC _____

Intrastate operating authority Certificate numbers(s) (including issuing State e.g. PA–12345) _____

_____

Military Traffic Management Command Acknowledgement/Acceptance

Signature _____

Title _____

Date _____

John O. Roach, II,
Army Liaison Officer with the Federal Register.

[FR Doc. 90–4658 Filed 2–28–90; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Postsecondary Education Improvement Fund National Board; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: On March 16, 1990 from 9 a.m. to 5 p.m.; closed from 12 noon to 5 p.m..

ADDRESSES: The Carlyle Suites, 1731 New Hampshire Avenue, NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets, SW., Washington, DC 20202, (202) 732–5750.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 1001 of the Higher Education Amendments of 1980, title X (20 U.S.C. 135a–1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants of a given kind.

On March 16, 1990 the Board will meet in open session from 9 a.m. to 12 noon. The proposed agenda for the open portion of the meeting will include the final recommendation of the National Board Subcommittee's "Report on New Directions". From 12 noon to 5 p.m. the meeting will be closed to the public for the purpose of reviewing and evaluating grant applications submitted to the Fund under the Innovative Projects for Community Services and Student Financial Independence Program. This portion of the meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. appendix 2) and under exemptions of the Government in the Sunshine Act (Public Law 94–409; 5 USC 552b(c)(4)(6). The review and discussions of the applications and the qualifications of proposed staff to work on these grants is likely to disclose commercial or financial information obtained from a person and privileged or confidential or information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, room 3100, Regional Office Building #3, 7th & D Streets, SW., Washington, DC 20202 from the hours of 8 a.m. to 4:30 p.m.

Leonard L. Haynes, III,
Assistant Secretary for Postsecondary Education.

[FR Doc. 90–4716 Filed 2–28–90; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Proposed Finding of No Significant Impact; 7–GeV Advanced Photon Source; Argonne National Laboratory

AGENCY: U.S. Department of Energy.

ACTION: Proposed finding of no significant impact.

SUMMARY: The U.S. Department of Energy (DOE) has prepared an Environmental Assessment (EA) for the construction and operation of the proposed 7–GeV Advanced Photon Source (APS), also known as the 7–GeV synchrotron radiation source, at Argonne National Laboratory, Argonne, Illinois. The main APS building would be ring-shaped with a circumference of about 4,083 feet. The complex would also include offices, general and special purposes laboratories, clean room laboratories, and service operation areas. Provisions are included for site access roads, parking, service utilities, and miscellaneous site amenities. The proposed APS would provide a national facility for advancing research in physics, chemistry, biology, and the materials and health sciences.

Based on the analysis in the EA, DOE believes that the proposed action does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* and, as such, proposes to issue a finding of no significant impact (FONSI).

The proposed FONSI and the supporting EA are being made available for public review for a period of 30 days following the date of this notice. Following completion of the public review period, DOE will consider comments received prior to making its final determination on whether to issue a FONSI or to prepare an environmental impact statement (EIS) for the proposed APS project.

Proposed Action

The proposed action is the construction and operation at Argonne National Laboratory (ANL) of the 7–GeV Advanced Photon Source and those associated facilities of the APS including the linear accelerator (linac), the synchrotron and the storage ring. The linac injects positrons into the synchrotron which accelerates them to 7–GeV before they are injected into the storage ring. The positrons circulate continuously in the storage ring with a current of approximately 100 milliampere. The storage ring is capable of accommodating 34 insertion devices specially designed to produce high brilliance x-ray beams for multi-discipline research. The experimental area, which houses the x-ray beam lines, would accommodate beam lines up to 80 meters long. The project would occupy 70 acres of fields and forest in the southwest portion of the 1275-acre ANL property.

A multistory central laboratory/office building would provide a working environment for up to 300 permanent staff scientists and support personnel at the site. Laboratory modules would be located around the outer wall of the experiment hall/storage ring building. These modules would contain offices, laboratories, a conference area, and service support space. Other proposed research and support structures are: service and utility buildings, and parking areas.

Alternatives

Two alternatives to the proposed action were considered in the EA:

—No action (the 7–GeV synchrotron radiation source would not be built),

—construction at other sites within ANL.

Taking no action would mean not constructing a 7–GeV synchrotron radiation source and would result in no changes to the existing environment.

However, synchrotron radiation has emerged as a powerful tool for probing the structure of matter and studying important physical and chemical processes. If the facility is not built, a number of scientific advances such as the determination of bulk and surface structure, the determination of catalytic activity of materials, microprobe impurity detection, inelastic x-ray scattering, and observation of the motion of atoms in protein systems would not occur.

Within ANL, four locations were identified as potentially suitable to meet the space requirements of the APS. Site selection was influenced by the following factors: (1) Suitability of the site to meet technical requirements of design configuration and functional relationships; (2) suitability of topography and subsurface conditions; (3) minimal environmental resources impacts; (4) avoidance of external and traffic-generated sources of vibration; (5) provision of a buffer zone between APS and the ANL site boundary; (6) minimal interference of existing structures; (7) availability of existing utilities; and (8) flexibility of the site for future expansion. Consideration of these factors eliminated two areas on the basis of technical considerations and one area was eliminated because of wetland involvement and topography features. Construction of the APS facility in the so-called South 800 Area at ANL provides the best overall resolution of these factors and is the preferred location for the facility.

Findings

The EA includes an assessment of impacts of constructing and operating the APS on land use, employment levels, vegetation, threatened and endangered species, cultural and historic resources, parking and traffic, noise, worker and public health, air quality, wetlands, and water and power consumption.

Construction Impacts

Initial activities at the proposed site include site grading, preparing and paving roadways and parking areas, and construction of various buildings and facilities. Erosion and sedimentation to surface waters would be controlled by limiting exposed areas, surface water diversion, water flow velocity control, slope stabilization, collection of runoff, water/solids separation, and post construction restoration. Because this property is currently part of the ANL site and has been intended to eventually support energy research facilities, this land conversion is in accord with long-range ANL planning and would have no significant effect on land use. Development of the entire APS site would decrease the amount of undeveloped areas in the ANL property by approximately 15%. No groundwater impacts would result since excavations do not extend to bedrock and recharge follows an extensive pathway through clay-rich glacial till which absorbs cations. Dust and fugitive emissions from construction would be temporary and local in nature. Construction noise is also expected to be temporary and local. Thus, no unusual or significant air quality problems or noise impacts are expected. No significant impacts to threatened or endangered species nor critical habitat are expected, since they are not present on the site.

No impacts are expected on the 100-year floodplain of Freund Brook because construction would not occur in this area. However, APS construction would result in the filling of three small wetlands (1.8 acres total). These wetlands provide some wildlife habitat but are of relatively low hydrological importance. The U.S. Army Corps of Engineers (COE) has issued a permit for construction in wetlands in accordance with section 404 of the Clean Water Act. As part of this permit, DOE is consulting with the COE on the implementation of plans to mitigate wetland loss. A Floodplain and Wetland Involvement Notice was published in the Federal Register (54 FR 18326) on April 28, 1989. No comments were received. By terms of the permit, detailed engineering specifications for the replacement wetlands that would be created would be provided to the COE before implementation. There is no practical alternative site on ANL where impacts on wetlands could be avoided. However, with mitigation in place, (i.e., full wetland replacement), significant impacts to wetlands are not expected. Impacts to nearby streams and aquatic biota would be minimized by following good engineering practices. Although temporary increases in stream turbidity from accidental construction site runoff would reduce aquatic biota, effects would be temporary, recovery should occur, and no long-term impacts would be suffered.

DOE has determined that the APS project would potentially affect sites eligible for the National Register of Historic Places. This includes two historic farm sites and one prehistoric site containing earth works. Consequently, DOE, the Advisory Council on Historic Preservation, and the State Historic Preservation Office (SHPO) have negotiated a Programmatic Agreement which stipulates that the DOE will develop and implement a data recovery plan in compliance with federal regulation and laws, subject to SHPO review and monitoring.

Operational Impacts

Water for drinking, cooling, and other uses at the APS would be obtained from the existing water supply system. The increased demand on the ANL sanitary sewer system from APS activity would be an increase of only 3% of the excess capacity. APS water consumption would have no significant effect on public communities surrounding ANL. The pumpage rates of these communities declined from 1980 to 1985 and are expected to continue declining as they convert from well water to Lake Michigan water usage. The additional 30,000-gallons per day of sanitary sewage discharge, which includes cooling water blowdown from APS activities, should have no significant effect on surface water quality. Sludge generated from the APS sanitary waste would be minimal since the increase in the demand of an additional 4 cubic yards per year is an increase of only 0.01% in the permitted limit of the ANL landfill.

The projected need for electric power represents a 19% decrease in excess power capacity available at ANL. Thus, the APS power demand is not expected to significantly affect the availability of electricity in the area of Chicago and its suburbs. The operation of APS is not expected to generate significant amounts of gaseous or particulate emissions. The noise from site traffic, compressors, cooling towers would be well within the Illinois State Noise Standard and DOE criteria for Occupational Safety and Health. During normal operation, the dose to the nearest offsite resident (0.9 mile to the southwest of the APS) from penetrating radiation (gamma-ray and neutron) is estimated to be 0.05 millirem per year which is well below the DOE standard of 100 mrem/year. The dose to workers, as the result of the maximum credible accident (probability less than 10^{-4}), would be 1.17 rem (23% of the allowed exposure limit to workers). The dose at the site boundary would be less than 1 mrem. During normal operation, the dose due to airborne emissions of activated products is calculated to be 6.0×10^{-2} mrem/year at the fenceline which is well below the 10 millirem per year standard of 10 CFR 61 (National Emission Standards for Hazardous Air Pollutants). Operation of the proposed APS would have little potential for impact on ecological resources beyond those occurring during the construction phase. Considering that a number of

APS workers would transfer from existing ANL activities to APS, the actual number of staff added to the current ANL work force of 3,760 persons by APS would be relatively small (8–16%). Since housing and services are not limited within the ANL community area, no significant socioeconomic impacts are expected from the additional work force to an area that has 3.5 million people within the 20-mile radius of ANL.

Single copies of the EA (DOE/EA–0389) are available from:

Robert C. Wunderlich, Project Manager, Advanced Photon Source, U.S. Department of Energy, Argonne Area Office, 9800 South Cass Avenue, Argonne, IL 60439, Phone: (708) 972–2366.

For further information regarding the NEPA process, contact:

Carol M. Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, Phone: (202) 586–4600.

Comments on the proposed FONSI may be sent to Mr. Wunderlich at the above address. Comments must be postmarked by March 31, 1990, to assure consideration.

Proposed Determination

Based on the analysis in the EA, DOE believes that the proposed action does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* and, as such, proposes to issue a finding of no significant impact (FONSI).

The proposed FONSI and the supporting EA are being made available for public review for a period of 30 days following the date of this notice. Following completion of the public review period, DOE will consider comments received prior to making its final determination of whether to issue a FONSI or to prepare an environmental impact statement for the proposed APS project.

Signed in Washington, DC, this February 26, 1990.

John C. Tseng,

Acting Assistant Secretary Environment, Safety and Health.

[FR Doc. 90–4711 Filed 2–28–90; 8:45 am]

BILLING CODE 6450–01–M

Renewal of Cooperative Agreement With Louisiana State University

AGENCY: Department of Energy.

ACTION: Intent to renew a cooperative agreement with Louisiana State University of Baton Rouge, Louisiana.

SUMMARY: "U.S. Gulf Coast Geopressured-Geothermal Program". The U.S. Department of Energy (DOE), Idaho Operations Office, intends to negotiate, on a noncompetitive basis, the renewal of a cooperative agreement for approximately $550,000 per year, for up to four years, with Louisiana State University (LSU) of Baton Rouge, Louisiana. This action is prompted by Public Law 93–40, the Geothermal Research, Development, and Demonstration Act of 1974. The proposed effort will allow DOE to continue geopressured-geothermal research effort in Microseismic Monitoring, Geological Investigation, and Subsidence Monitoring. The continuing research supports the promotion of expansion of the knowledge of geothermal and geopressured technologies. These activities will further advance the knowledge, and ultimately encourage the utilization, of an environmentally benign renewable energy source that will help reduce dependence upon foreign energy sources and help reduce atmospheric pollution. In particular, the proposed research meets the objectives as stated in the programmatic Annual Report for General Environment and Safety, Geopressure Other Operations, Geoscience, Geopressured Resource Analysis and improves the technology to the point where electricity could be produced commercially from a substantial number of geopressured resource sites via wells of opportunity.

The authority and justification for determination of noncompetitive financial assistance is DOE Financial Assistance Rules 10 CFR parts 600.7(b)(2)(i), (A) The activity to be funded is necessary to the satisfactory completion and is a continuation of an activity presently being funded by DOE, and for which competition for support would have a significant adverse effect on continuity or completion of the Microseismic Monitoring, Geological Investigation, and Subsidence Monitoring. The work at LSU definitely meets the purpose of Public Law 93–40 and addresses a public need for decreasing the utilization of energy. Public response may be addressed to the contract specialist below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Marshall Garr, Contract Specialist (208) 526–1536.

Dated: February 21, 1990.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 90–4709 Filed 2–28–90; 8:45 am]

BILLING CODE 6450–01–M

Idaho Operations Office; Cooperative Agreement With the Oregon Institute of Technology Geo-Heat Center

AGENCY: Department of Energy.

ACTION: Intent to renew a cooperative agreement with the Oregon Institute of Technology Geo-Heat Center, Klamath Falls, OR.

SUMMARY: "Research and Development of Geothermal and Geopressured Technologies". The U.S. Department of Energy (DOE), Idaho Operations Office, gives notice that it intends to renew, on a noncompetitive basis, a cooperative agreement for approximately $150,000 over a six month project period, with the Oregon Institute of Technology Geo-Heat Center, Klamath Falls, OR. This action is prompted by Public Law 93–410, the Geothermal Research and Development Act of 1974. The project involves continuation and completion of various research and development activities including the promotion of geothermal and geopressured technologies and the international sale of U.S. goods and services. The Geo-Heat Center will also provide services to state and federal agencies who receive requests for geothermal development assistance. These activities serve as a means of transferring technology developed through federal laboratories. The proposed activities will provide for innovative research and development assistance in the areas of geothermal and geopressured direct-use development. The authority and justification for the renewal of this assistance noncompetitively is DOE Financial Assistance Rules 10 CFR part 600.7(b)(2)(i). The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE. This work meets the purpose of Public Law 93–410 and addresses a public need for decreasing the utilization of energy. Public response may be addressed to the Contract Specialist below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Kenny K. Osborne, Contract Specialist (208) 526–0805.

Dated: February 21, 1990.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 90–4708 Filed 2–28–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket Nos. 88-38-NG and 88-50-NG]

Consumers Power Co. and Poco Petroleum, Inc.; Applications To Transfer and Amend Natural Gas Import Authority

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of applications to transfer authorization to import Canadian natural gas from Poco Petroleum, Inc. to Consumers Power Company and to amend import authority.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on January 12 and 16, 1990, as supplemented on February 6, 8, and 20, 1990, of requests filed by Consumers Power Company (Consumers) and Poco Petroleum, Inc. (Poco). Consumers and Poco request that Poco's authorization to import Canadian gas for sale to Consumers, previously granted to Poco in DOE/ERA Opinion and Order No. 287 (Order 287) on December 23, 1988, be transferred to Consumers. The requested transfer would increase Consumers' existing import authority granted in DOE/ERA Opinion and Order 284 (Order 284) on December 7, 1988, by 25,000 Mcf per day, from 59,000 Mcf per day, to 84,000 Mcf per day, and would rescind Poco's existing authority to import gas on behalf of Consumers. The transfer would result in no net change of import volumes.

The applications were filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filled at the address listed below no later than 4:30 p.m., e.s.t., March 16, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: Poco, a Delaware corporation, is a wholly-owned subsidiary of Poco Petroleums, Ltd. (Poco, Ltd.), a Canadian corporation, and is primarily active as a marketer of gas in the U.S. Consumers is a combined natural gas and electric utility incorporated in the state of Michigan and an operating subsidiary of CMS Energy Corporation.

Order 287 authorized Poco to import Canadian natural gas on behalf of two gas customers. Order 287 granted Poco authority to import up to 15,000 Mcf per day of Canadian natural gas beginning December 23, 1988, through October 31, 1989, and up to 25,000 Mcf per day beginning on November 1, 1989, through March 31, 2005, pursuant to the pricing and other provisions set forth in Poco, Ltd.'s gas purchase agreement with Consumers. (As Poco notes in its application request, Order 287 contained a typographical error and the November 1, 1990, date should read November 1, 1989.) Additionally, the order granted Poco conditional authority to import 25 Mcf per day of Canadian natural gas for Midland Cogeneration Venture Limited beginning on the date of first delivery in 1990 through October 31, 2004. Applicants' request for transfer of Poco's import authority is limited to those volumes imported for Consumers.

In its application, Consumers states that 15,000 Mcf per day of the gas that it would import under the requested transfer would continue to be supplied by Poco's parent, Poco, Ltd., pursuant to their April 29, 1988, natural gas purchase contract as amended by a series of letter agreements. The remaining 10,000 of the 25,000 Mcf per day would be supplied by North Canadian Oils, Ltd. (NCO), pursuant to a August 22, 1989, contract between Consumers and NCO.

Consumers and Poco both state that the underlying pricing arrangements found in Consumers' April 29, 1988, natural gas purchase agreement with Poco, Ltd., remain substantially the same. The reference price, which encompasses both the demand and commodity charge components to be paid by Consumers, has been adjusted downward to reflect different transportation charges resulting from the change in the point of sale which will now be at the international border near Emerson, Manitoba, rather than "a delivery point(s) on Consumers' own system" in Michigan. Consumers has assumed direct responsibility for the domestic transportation costs of the volumes imported through the existing facilities of Great Lakes Transmission Company's (Great Lakes) and ANR Pipeline Company's (ANR) systems. The transportation adjustment reduces the reference price of the imported gas by 52 cents per MMBtu. The Poco, Ltd., reference price is 95 percent of the lowest cost of gas acquired by Consumers, or its affiliate, Michigan Gas Storage Company (MGSC), from interstate pipelines at a 100 percent load factor rate and under a firm contract with a term of not less than two years. Accordingly, the January 1990 reference price of $2.8993 per MMBtu is reduced to $2.3793 per MMBtu at Emerson.

Under the NCO contract, the reference price is 93 percent of a weighted average cost of gas acquired by Consumers or MGSC from interstate pipelines at a 100 percent factor rate and under firm contracts with a term of not less than two years. The reference price for January 1990, after subtracting the current Great Lakes and ANR transportation charges totaling 52.73 cents per MMBtu, is $2.336 per MMBtu.

According to the applicants, the Poco, Ltd., and NCO contracts provide market responsive pricing mechanisms. The commodity price of the imported gas to Consumers is indexed to percentages that are less than Consumers' cost of gas supplied by interstate pipelines and, according to Consumers, ensures that the price of gas will remain competitive during the contract period ending March 31, 2005. In addition, since the volumes being imported under the proposed transfer of authority remain identical, the applicants state that the need for the gas has already been demonstrated in Orders 284 and 287. The applicants also state that the long-term supply is secure not only because of the proximity of Consumers' system to Canada, but because both the Poco, Ltd., and NCO contracts indemnify Consumers against certain costs in obtaining alternative gas supplies in the event of delivery shortfalls.

The decision on Consumers' and Poco's applications for the transfer of Poco's import authority to Consumers will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether such transfer of import authority is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination include need for the gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of

competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because the volumes are needed for Consumers' system supply, the price of the gas is competitive, and its Canadian supply is reliable. Parties opposing the import arrangement bear the burden of overcoming these assertions.

Consumers' January 12, 1990, application and its supplemental filing of February 20, 1990, requested expedited consideration by the DOE because Great Lakes' authority to transport gas for Consumers and Poco is scheduled to terminate March 22, 1990, and Consumers alleges that the Federal Energy Regulations Commission will not act on Great Lakes' requested extension of its transportation certificate until DOE makes its determination. In light of these circumstances and the fact this application involves a transfer of import authority rather than new authority, the public comment period is shortened to fifteen (15) days.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 29, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless it appears during the proceeding on this application that the grant or denial of the authorization would significantly affect the quality of the human environment, the DOE expects that no additional environmental review will be required.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulation in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Consumers' and Poco's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on February 26, 1990.

Constance L. Buckley,

Deputy Assistant Secretary For Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–4710 Filed 2–28–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3727–8]

Open Meeting of Technology Innovation and Economics Committee of National Advisory Council for Environmental Technology Transfer

Under Public Law 92463 (the Federal Advisory Committee Act), EPA gives notice of the second meeting of the Focus Group on Environmental Permitting of the Technology Innovation and Economics (TIE) Committee of the National Advisory Council on Environmental Technology Transfer (NACETT). The meeting will convene on March 15, 1990, at 9:00 a.m. at Room 221 at the Hall of the States, 444 North Capitol Street NW., Washington, DC 20001.

The second meeting of the Focus Group on Environmental Permitting will serve primarily as a fact finding forum concentrating on the factors within the existent permitting and compliance systems which impede the development and diffusion of innovative environmental technology. Additionally, the meeting will discuss the agenda of the issues and activities that the Focus Group will address over the calendar year. The purpose of the meeting will not be decision making with respect to recommendations that the TIE Committee may later submit to NACETT.

Members of the public wishing to make comments are invited to submit them in writing to David R. Berg, Director of the TIE Committee, by March 12, 1990. Please send comments to David R. Berg (A–101 F6), EPA, Room 115, 499 South Capitol Street SW., Washington, DC 20460.

The meeting will be open to the public. Additional information may be obtained from David R. Berg by writing the above address or calling Mr. Berg at 382–3153.

Dated: February 20, 1990.

David J. Graham,

Acting Director, Office of Cooperative Environmental Management.

[FR Doc. 90–4685 Filed 2–28–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3728-2]

Science Advisory Board; Relative Risk Reduction Strategies Committee; Health Risk Subcommittee; Open Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given of a public meeting of the Health Risk Subcommittee of the Relative Risk Reduction Strategies Committee. The meeting will be held from 9 a.m. to 5 p.m. on March 15 and 16, 1990 at the Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD 20814. The hotel telephone number is (301) 652-2000. The Subcommittee will continue its discussions on the development of a report on environmental health risk assessment strategies.

Background

For further information concerning this project, please refer to the notices contained in 54 FR 35386, August 25, 1989, and 54 FR 38283, September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the Subcommittee or the meeting, or wishing to make a statement at the meeting, should contact Samuel Rondberg, Designated Federal Official, U.S. Environmental Protection Agency (A-101F), 401 M Street SW., Washington, DC, (202) 382-2552, (FTS) 382-2552. Seating at the meeting is on a first come basis.

Dated: February 22, 1990.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 90-4684 Filed 2-28-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for seven new FM stations:

Applicant, City and State	File No.	MM docket No.
I		
A. Robert B. Mahaffey; Ozark, MO.	BPH-870123MD...	90-47
B. Ozark Entertainment Network; Ozark, MO.	BPH-870127MH...	
C. Melvin B. Caldwell; Ozark, MO.	BPH-870127MJ....	
D. Dorothy S. Lemmon; Ozark, MO.	BPH-870127ML ...	
Issue heading and Applicant(s)		
1. Comparative, A, B, C, D		
2. Ultimate, A, B, C, D		
II		
A. Brian Andrew Larson; Hoosick Falls, NY.	BPH-880601MZ ...	90-57
B. J and B Broadcasting; Hoosick Falls, NY.	BPH-880602MX ...	
C. Bruce M. Lyons; Hoosick Falls, NY.	BPH-880602OQ ...	
Issue heading and Applicant(s)		
1. Comparative, A, B, C		
2. Ultimate, A, B, C		
III		
A. Carmel Broadcasting Limited Partnership; Carmel, CA.	BPH-880208MK ...	90-48
B. Lone Cypress Radio Associates, Inc.; Carmel, CA.	BPH-880210ML....	
C. George S. Finn, Jr.; Carmel, CA.	BPH-880211MI.....	
D. California Kool Broadcasters Limited Partnership; Carmel, CA.	BPH-880211MJ....	
E. Highlands Broadcasting Co., Inc.; Carmel, CA.	BPH-880211MK ...	
F. Paso Hondo Broadcasting Limited Partnership, A California Limited Partnership; Carmel, CA.	BPH-880211ML....	
G. Stoddard Johnston and Sherrie McCullough d/b/a J&M Broadcasting Company; Carmel, CA.	BPH-880211MM...	
H. Cal Tower Broadcast Group; Carmel, CA.	BPH-880211MR...	
Issue heading and Applicant(s)		
1. See Appendix, D		
2. See Appendix, D		
3. See Appendix, D		
4. Comparative, ALL		
5. Ultimate, ALL		
IV		
A. Robert Michael Peppercorn; Gridley, CA.	BPH-880407MY ...	90-51
B. Y-N-S Air, Inc.; Gridley, CA.	BPH-880407NF....	
Issue heading and Applicant(s)		
1. See Appendix, B		
2. See Appendix, B		
3. See Appendix, B		
4. Comparative, A, B		
5. Ultimate, A, B		
V		
A. Tharpe Communications, Inc.; Hogansville, GA.	BPH-880531MN...	90-52
B. Christopher N. Tarkenton; Hogansville, GA.	BPH-880601MX ...	
C. TFB and Associates Limited Partnership; Hogansville, GA.	BPH-880602NB....	
D. Info-Air, Inc.; Hogansville, GA.	BPH-880602OP....	
Issue heading and Applicant(s)		
1. Comparative, A, B, C, D		
2. Ultimate, A, B, C, D		
VI		
A. Monte R. Bitner & Leah R. James d/b/a Bitner-James Partnership; Quincy, FL.	BPH-870227ME ...	90-70
B. CCI-FM, Ltd.; Quincy, FL.	BPH-870313MO...	
C. Denny Workman d/b/a Quincy Communications; Quincy, FL.	BPH-870313NG ...	
D. Perfect FM Limited Partnership; Quincy, FL.	BPH-870313NQ ...	
E. Quincy Broadcasters, Inc.; Quincy, FL.	BPH-870313NY....	
F. Uptown Broadcasting, Inc.; Quincy, FL.	BPH-870309MD (Previously Returned).	
Issue heading and Applicant(s)		
1. See Appendix, D		
2. See Appendix, D		
3. See Appendix, D		
4. Financial, B		
5. Air Hazard, A, E		
6. Comparative, A, B, C, D, E		
7. Ultimate, A, B, C, D, E		
VII		
A. Cashmere Valley Broadcasters; Cashmere, WA.	BPH-870904MP ...	90-50
B. Upper Valley Broadcasting Corp.; Cashmere, WA.	BPH-870908MB ...	
C. Cashmere Valley Broadcasting Corp.; Cashmere, WA.	BPH-870908MP ...	
Issue heading and Applicant(s)		

Applicant, City and State	File No.	MM docket No.
1. Environmental, C 2. Comparative, A, B, C 3. Ultimate, A, B, C		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (Carmel, California)

Additional Issue Paragraphs

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (California Kool).

2. To determine whether D's (California Kool) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 through 2 above, whether D (California Kool) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix (Gridley, California)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of B (YNS).

2. To determine whether B's (YNS's) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 through 2 above, whether B (YNS) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix (Quincy, Florida)

Additional Issue Paragraphs

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (Perfect).

2. To determine whether D's (Perfect) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 through 2 above, whether D (Perfect) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90–4653 Filed 2–28–90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–010999–006.
Title: Ecuador Discussion Agreement.
Parties:
United States Atlantic and Gulf/Ecuador Freight Association.
Empresa Naviera Santa, S.A.
Transportes Navieros Ecuatorianos.
Compania Chilena de Navigacion Interoceania, S.A.
Gran Golfo Express.

Synopsis: The proposed amendment would delete Transportes Navieros Ecuatorianos as a party to the Agreement.

Agreement No.: 203–011162–005.
Title: PANAM Discussion Agreement.
Parties:
United States Panama Freight Association.
Central America Shippers, Inc.
Lykes Bros. Steamship Co., Inc.
Ecuadorian Line, Inc.
Gran Golfo Express.

Synopsis: The proposed amendment would add Nedlloyd Lines as a party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 203–011272.
Title: Deppe/Lykes Discussion Agreement.
Parties:
Deppe Linie GmbH & Co.
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed Agreement would authorize the parties to consider, discuss, exchange information and reach non-binding agreement with respect to matters of mutual interest and concern in the US/North Europe trade.

By Order of the Federal Maritime Commission.

Dated: February 23, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–4622 Filed 2–28–90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Title: Puerto Rico Ports Authority/Transcaribbean Maritime Corporation Terminal Agreement.
Parties:
Puerto Rico Ports Authority.
Transcaribbean Maritime Corporation.

Synopsis: The Agreement amends the basic agreement to provide for the lease of an additional 11,250 square feet of open area at Pier 14, San Juan, Puerto Rico at a minimum monthly rental of $375.00. It also extends the agreement term for three years.

By order of the Federal Maritime Commission.

Dated: February 23, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–4583 Filed 2–28–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Title: San Diego Unified Port District/ Pasha Properties, Inc. Terminal Option Agreement.

Parties:

San Diego Unified Port District.

Pasha Properties, Inc. (Pasha).

Synopsis: The Agreement grants Pasha an option to enter into a Terminal Operator Agreement for a motor vehicle terminal in connection with the handling and storage of automobiles received at the Port of San Diego. The Agreement further provides that the option may not be exercised unless the express conditions in Subparagraph 4(a) and 4(b) of the agreement have been performed: i.e., (1) a surface drainage system serving the real property covered in the Agreement must be "open" and "in working order;" and (2) an adequate California Environmental Quality Act document for Pasha's proposed project is to be prepared, processed and completed in accordance with law, and the Board of Port Commissioners is to certify or otherwise approve said document and determine, by adoption of a resolution, to approve and carry out said project. The option has a 12-month term.

By order of the Federal Maritime Commission.

Dated: February 23, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–4587 Filed 2–28–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time and date: 10:00 a.m., March 14, 1990.

Place: Fifth Floor Conference Room, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW., Washington, DC.

Status: Open.

Matters to be considered: Approval of the minutes of the October 17, 1989, meeting; report of the Executive Director on the status of the Thrift Savings Plan; TSP telephone inquiry service; discussion of upcoming RFPs; legislation; bonding regulations issued by the Department of Labor; and new business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara, Committee Management Officer, on (202) 523–6367.

Dated: February 21, 1990.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 90–4618 Filed 2–28–90; 8:45 am]

BILLING CODE 6710–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Board of Scientific Counselors; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92–463, 86 Stat. 770–776], and section 402(b)(6) of the Public Health Service Act, [42 U.S. Code 282(b)(6)] as amended, the Acting Director, NIH, announces the establishment, effective March 15, 1990, of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine.

The Board of Scientific Counselors, National Center for Biotechnology Information, shall advise the Director and the Deputy Director for Intramural Research, NIH; the Director, National Library of Medicine; and the Director, National Center for Biotechnology Information, concerning the intramural research and development programs of the National Center for Biotechnology Information through regularly scheduled visits to the National Library of Medicine for assessments of the research and development programs in progress, assessments of proposed programs and evaluation of the productivity and performance of staff scientists.

Duration of this committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: February 22, 1990.

William F. Raub,

Acting Director, NIH.

[FR Doc. 90–4613 Filed 2–28–90; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee B

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 22–23, 1990 in Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 22 from 9 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 22 from approximately 10 a.m. until adjournment on March 23 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236 will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Ouellette, Executive Secretary, Heart, Lung, and Blood Research Review Committee B, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland

20892, (301) 496–7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research, National Institutes of Health)

Dated: February 6, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–4614 Filed 2–28–90; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee A

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 22–23, 1990 in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 22 from 9 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 22 from approximately 10 a.m. until adjournment on March 23 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health)

Dated: February 6, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–4615 Filed 2–28–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details for approximately one-half hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, Room 5C05, National Institutes of Health, Bethesda, Maryland, 20892, (301/496–9322), will provide summaries of the meetings and rosters of the committee members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee A

Executive Secretaries: Dr. Walter Spieth, Dr. Maria Mannarino, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666

Dates of Meeting: March 6–9, 1990

Place of Meeting: (March 6) Crowne Plaza Hotel, 1750 Rockville Pike, Rockville, Maryland 20814, 301/468–1100

Open: March 6, 7:30 p.m. to 8:00 p.m.

Closed: March 6, 8:00 p.m. to recess

Place of Meeting: (March 7–9) Bldg. 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland 20892

Closed: March 7, 8:30 a.m. to recess; March 8, 8:30 a.m. to recess; March 9, 8:30 a.m. to adjournment

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee B

Executive Secretary: Dr. David Lavrin, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666

Dates of Meeting: March 12–13, 1990

Place of Meeting: (March 12) Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814

Open: March 12, 7:00 p.m. to 7:30 p.m.

Closed: March 12, 7:30 p.m. to recess

Place of Meeting: (March 13) Building 31, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20814

Closed: March 13, 8:30 a.m. to adjournment

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee C

Executive Secretary: Dr. James Harwood, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666

Dates of Meeting: March 13–16, 1990

Place of Meeting: Building 3l, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892

Open: March 13, 8:00 p.m. to recess

Closed: March 14, 8:30 a.m. to recess; March 15, 8:30 a.m. to recess; March 16, 8:30 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: February 6, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–4617 Filed 2–28–90; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following study sections for March 1990, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in

accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	March 1990 meeting	Time	Location
Behavioral and Neurosciences–1, Dr. Luigi Giacometti, Rm. 303, Tel. 301–496–5352.	Mar. 21–23	9:00	The Savoy Suites Hotel, Washington, DC.
Behavioral and Neurosciences–2, Dr. Luigi Giacometti, Rm. 303, Tel. 301–496–5352.	Mar. 12	8:30	Omni Shoreham Hotel, Washington, DC.
Biological Sciences–1, Dr. James R. King, Rm. A22, Tel. 301–496–1067,.	Mar. 14–16	8:30	St. James Hotel, Washington, DC.
Biological Sciences–2, Dr. Syed Amir, Rm. 326, Tel. 301–496–3117	Mar. 14–16	8:30	Holiday Inn, Georgetown, DC.
Biological Sciences–3, Mr. Gene Headley, Rm. A27, Tel. 301–496–7287.	Mar. 19–20	8:30	
Biomedical Sciences, Dr. Charles Baker, Rm. 219, Tel. 301–496–7150.	Mar. 19–21	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Clinical Sciences–1, Ms. Jo Pelham, Rm. 319, Tel. 301–496–7477	Mar. 22–23	8:30	Holiday Inn Crown Plaza, Rockville, MD.
Clinical Sciences–2, Ms. Jo Pelham, Rm. 319, Tel. 301–496–7477	Mar. 12–13	8:30	Holiday Inn Crown Plaza, Rockville, MD.
Immunology, Virology & Pathology, Dr. Lynwood Jones, Rm. A20, Tel. 301–496–7510.	Mar. 21–23	8:30	Holiday Inn, Georgetown, DC.
International & Cooperative Projects, Dr. Sandy Warren, Rm. A27, Tel. 301–496–7600.	Mar. 22–23	8:30	Hyatt Regency, Bethesda, MD.
Physiological Sciences, Dr. Nicholas Mazarella, Rm. A25, Tel. 301–496–1069.	Mar. 15–16	8:30	Holiday Inn Crowne Plaza, Rockville, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: February 6, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–4616 Filed 2–28–90; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Fiscal Year 1990 Estimated National Average Monthly Payments for Extended Care Services Under Part A of Title XVIII of the Social Security Act

AGENCY: Health Resources and Services Administration, DHHS, PHS.

ACTION: Notice.

SUMMARY: This notice announces the Fiscal Year (FY) 1990 estimated national average monthly payments for Medicare extended care services under part A of title XVIII of the Social Security Act. This information is provided for the purpose of determining the limitation on total payments to States under title XXIV of the Public Health Service (PHS) Act, section 2401(a), part A—Formula Grants to States for Home and Community Based Health Services, with respect to Acquired Immune Deficiency Syndrome (AIDS).

FOR FURTHER INFORMATION CONTACT: Ms. M. June Horner, Acting Director, Division of HIV Services, Office of Special Projects, Bureau of Maternal and Child Health and Resources Development, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 9A05, Rockville, Maryland 20857, Telephone (301) 443–0652.

SUPPLEMENTARY INFORMATION: For the purpose of making payments to States under title XXIV, section 2401(a), of the PHS Act, section 2404(c)(1) requires that the Secretary determine for FY 1990 and publish the national average monthly payments for extended care services under part A of title XVIII of the Social Security Act, for each resident of a skilled nursing facility.

Since the actual FY 1990 average is not available, the estimated average amount will be used for this purpose. The Secretary has determined that the FY 1990 estimated national average monthly payment net of beneficiary coinsurance is $2,930. Section 2404(c)(2) limits payment to a State for home and community based health services for eligible individuals to 65 percent of the national average monthly payments.

Funds were appropriated for FY 1990 by Public Law 101–166, under the authority of section 2401(a) of the PHS Act, for home and community based services for individuals infected with the etiologic agent for AIDS who are either medically or chronically dependent.

A notice of availability of funds will be published in the **Federal Register** following this announcement. All States and eligible territories (as defined in section 2413(5) of the PHS Act) will be contacted directly by HRSA regarding the grant application process.

Dated: February 23, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90–4654 Filed 2–28–90; 8:45 am]

BILLING CODE 4160–17–M

Committee To Coordinate Environmental Health and Related Programs Ad Hoc Subcommittee on Fluorides

Notice is hereby given that the Committee to Coordinate Environmental Health and Related Programs (CCEHRP) Ad Hoc Subcommittee on Fluoride is

soliciting copies of peer reviewed scientific studies of the health effects and health benefits of fluorides.

Background

CCEHRP is a standing internal committee of the Public Health Service (PHS), established by the Assistant Secretary for Health to coordinate and promote the exchange of environmental health information; to carry out efforts which encourage consensus on environmental health related research, exposure assessments, risk assessments, and risk management procedures; and to serve as the primary focal point within the Department of Health and Human Services for information coordination within and outside the Department on environmentally related issues. The Committee is composed of agency heads and subagency heads of the Public Health Service and is chaired by the Assistant Secretary for Health.

The Assistant Secretary for Health has established an Ad Hoc Subcommittee on fluorides, under CCEHRP, to review the health risks and health benefits of fluoride compounds. This action was taken in light of the preliminary findings of a bioassay of sodium fluoride conducted by the PHS's National Toxicology Program. To accomplish this task the Ad Hoc Subcommittee on Fluorides requests copies of peer reviewed research publications and/or research for which articles are pending publication in peer reviewed journals.

DATES: All materials should be submitted by March 23, 1990.

ADDRESSES: Please send all responses to John Gallivan, PHS, Office of Health Planning and Evaluation, Room 740G, Hubert H. Humphrey Building, Washington, DC 20201.

Dated: February 16, 1990.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 90-4698 Filed 2-28-90; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-90-3028]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 23, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Comprehensive Homeless Assistance Plan.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed use: States, metropolitan cities, urban counties, and territories are required to submit a Comprehensive Homeless Assistance Plan and annual progress report in order to receive assistance under Title IV Housing Assistance Programs: Emergency Shelter Grants Supportive Housing Demonstration, Supplemental Assistance for Facilities to Assist the Homeless, and section 8 Assistance for Single Room Occupancy.

Form Number: None.

Respondents: State or Local Governments

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Submission of CHAPS	375		1		74.00		27,750
Sharing of Information Copies of CHAPS	375		1		.75		281.25
Assurance of Drug-Free Homeless Facility	375		1		.25		93.75
Annual Performance Report	375		1		22.00		8,250.00
Substantive Responses to HUD Recommendations on Annual Performance Report	125		1		3.00		375.00

Total Estimated Burden Hours: 36,750.
Status: Revision.
Contact: James N. Forsberg, HUD, (202) 755–6300; John Allison, OMB, (202) 395–6880.

Dated: February 23, 1990.

[FR Doc. 90–4598 Filed 02–28–90; 8:45 am]
BILLING CODE 4210–01–M

Office of Administration

[Docket No. N–90–3027]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 20, 1990.

John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Audit Guide for Audits of GNMA-Approved Issuers of Mortgage-Backed Securities for Use by Independent Auditors.

Office: Government National Mortgage Association (GNMA).

Description of the Need for the Information and its Proposed Use: The Audit Guide will be used to ensure uniform and adequate audit coverage of GNMA Mortgage-Back Securities. The annual audit is mandated as part the contractural arrangement between GNMA and the issuer in their guaranty agreement.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,250		1		6		7,500

Total Estimated Burden Hours: 7,500.
Status: Reinstatement.
Contact: Charles Clark, HUD, (202) 755–5535. John Allison, OMB, (202) 395–6880.

Dated: February 20, 1990.

[FR Doc. 90–4596 Filed 2–28–90; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Office of Tribal Services; Tribal Self-Governance Demonstration Grant Program

AGENCY: Bureau of Indian Affairs, Interior.
ACTION: Announcement of availability of competitive planning grant funds for Federally recognized Indian tribes.

SUMMARY: The Bureau of Indian Affairs (Bureau) announces the availability of $1,184,000 in grant funds to continue the Self-Governance Demonstration Grant Program in fiscal year 1990. The nine tribes which received first and second year planning grants may receive a grant under this announcement for the negotiation of a Self-Governance Demonstration Project agreement. In addition, the Mescalero Apache Tribe, which received a first year planning grant, only, may receive a second planning grant or funds for the negotiation of a Self-Governance Demonstration Project agreement, but not both, based on its need and the merits of any application received under this announcement. These funds will also allow second year planning grant money, if applied for and based on need and merit, for the seven tribes which participated in the project in fiscal year 1989 for the first time. Funds are also available for new planning grants in fiscal year 1990. The grants, awarded for a six-month period, will permit tribes to develop tribally designed programs and budgetary priorities as well as proposals for Self-Governance Demonstration Project agreements based on tribes' fiscal and programmatic needs to carry out or assume control over various Bureau programs, services or functions.

DATES: The closing date for the submission of applications under this announcement is April 2, 1990.

FOR FURTHER INFORMATION CONTACT: Mitchell L. Parks (202) 343–1705 or George Clark (202) 343–1708, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, NW., Room 4627–MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

A. *Purpose of the Program:* The purpose of the program under this announcement is to continue the Self-Governance Demonstration Grant Program which began in fiscal year 1988. In fiscal year 1990, this program will

provide approximately $20,000 to nine of the first ten tribes (see list of first ten tribes at end of this section) to negotiate a Self-Governance Demonstration Project agreement reflecting tribally determined budgetary and programmatic priorities and as authorized by Title III of Public Law 93–638, as amended. It will also allow for a second year planning grant or approximately $20,000 to negotiate a Self-Governance Demonstration Project agreement to the Mescalero Apache Tribe, but not both. It will also allow for second year planning grants to the seven tribes participating in the program in fiscal year 1989 for the first time. In addition, the fiscal year 1990 Self-Governance Demonstration Grant Program will allow for the award of approximately eleven grants averaging $50,000 per award to tribes which have not previously received a grant under this program.

The Self-Governance Demonstration Grant Program is designed to allow tribes to plan for the exercise of greater degrees of self-determination by assuming more and more control over Bureau programs and services through future agreements negotiated with the Secretary of the Interior or his designated representative. The grant allows tribes to gather information to determine the current types and amounts of programs, services, and fiscal resources available within its service area and to plan what types, amounts of programs, services, and fiscal resources should be available to its members rather than be limited to providing the same programs, services, or functions as the Bureau would provide. Awards will be made pursuant to the appropriations received through Public Law 101–121, the Interior and Related Agencies Appropriations Act of 1990. Grants will be awarded on a competitive basis to those tribes meeting the eligibility criteria and other provisions as contained in this announcement. Applications not meeting all provisions of this announcement will be considered non-responsive and will not be reviewed for funding, e.g., an application which does not include a tribal council resolution will be considered non-responsive. There shall be no appeal from a determination by the Bureau regarding the non-responsiveness of any application received.

First Year Tribes:

Hoopa Valley
Jamestown Klallam
Lummi
Quinault
Salish and Kootenai
Mescalero Apache
Mille Lacs
Red Lake
Rosebud
Tlingit-Haida

B. *Eligibility Criteria:* To receive a grant under this announcement, a tribe must:

1. Make a request for a grant by resolution of its governing body which contains: a) a statement indicating a desire to participate in the Self-Governance Demonstration Project; b) a commitment to develop a plan for a consolidated contract or other type of agreement for direct funding of Bureau programs, services or functions;

2. Have operated two or more self-determination contracts for at least three years without significant or material audit exceptions (material audit exception as used here means audit findings which can result in criminal action against a responsible tribal official or bills of collection being issued against a tribe); and

3. Furnish an organization-wide or single audit report as prescribed by Public Law 98–502, the Single Audit Act of 1984, for fiscal year 1988 which contains no significant or material audit exceptions (material exceptions here means the same as in item 2, immediately above, and audit findings requiring a corrective action plan as prescribed by the Single Audit Act, Public Law 98–502).

The seven tribes participating in fiscal year 1989 must demonstrate a need for funds to complete a proposed agreement. To demonstrate a need, a tribe must satisfy criterion number 1, above, and lack funds to prepare a direct funding proposal.

The original tribes may request up to $20,000 each to negotiate a Self-Governance Demonstration Project agreement. The funds may be used for legal advice, travel costs, or any other expense necessary to negotiate an agreement so long as such costs are reasonable, allocable, and allowable under the terms proposed by the agreement and in accordance with OMB Circular A–87, Cost Principles for State and Local Governments.

C. *Grant Period:* Duration of planning grants awarded under this announcement shall be for a period of six months or less.

D. *Funds Available:* The Bureau has an appropriation of $1,184,000 for the Self-Governance Demonstration Grant Program in fiscal year 1990. This may allow for the awarding of 18 to 20 planning grants of approximately $50,000 each, as well as for grants to the first ten tribes for negotiation of Self-Governance Demonstration Project agreements.

E. *Application Process:* Applications submitted for funding under this announcement shall be on an SF–424, and, as may otherwise be provided by OMB Circular A–102. In addition to a tribal council or governing body resolution, an applicant shall submit a narrative description of grant activities as well as a line item budget and budget justification. In formulating its proposal, a tribe may use the following as guides for the effort:

1. *Authorizations:* The governing body of an eligible tribe for the purposes of this announcement is authorized to:

(a) Conduct activities which provide the tribe with a greater understanding of Bureau programs and which may lead the tribe to a position where it is better able to plan, conduct, consolidate, and administer programs, services, and functions authorized under the acts of April 16, 1934 (U.S.C. 452; 48 Stat. 596) and Nov. 2, 1921 (25 U.S.C. 13; 42 Stat. 208);

(b) Conduct activities and gather information which provides the tribe with a greater understanding of Bureau programs and which may lead the tribe to a developmental level where the tribe determines that it is desirable to redesign Bureau programs, activities, functions, or services and to reallocate funds for such programs, activities, and services; and

(c) Conduct activities and gather data which may enable the tribe to identify and specify the services to be provided, the functions to be performed, and the respective responsibilities of the tribe and the Bureau under a proposed Self-Governance Demonstration Project agreement.

2. *Other Conditions:* In proposing terms for an agreement:

(a) A tribe is entitled to receive funds for any programs, services, or functions in an amount equal to the amount the tribe would be eligible to receive under contracts and grants authorized by Public Law 93–638, as amended, including direct program costs and indirect costs, and for any funds which are specifically related to the provisions by the Bureau of services and benefits to the tribe and its members, provided; however, the funds for trust services to individual Indians are available under any written agreement to the extent that the services would have been provided by the Bureau are provided to individual Indians by the tribe;

(b) A tribe may not receive funds under a self-determination contract for any program, service, or function to be

provided or performed under a proposed agreement under this announcement;

(c) A tribe submitting a proposal for an agreement as a deliverable is not obligated to enter into an agreement with the Bureau. The proposal merely serves as a starting point for negotiations between the tribe and Bureau for arriving at an agreement;

(d) A tribe may retrocede all or any portion of a direct funding agreement after completing the first year of the agreement;

(e) Participation by a tribe in the grant program or a subsequent Self-Governance Demonstration Project agreement will not (i) effect, modify, diminish, or otherwise impair the sovereign immunity from suit enjoyed by the tribe, or (ii) authorize, require, or permit the determination of any existing trust responsibility of the United States with respect to the tribe or its members.

F. *Application Review and Approval Process:* Applications submitted in response to this announcement will be subject to competitive review and evaluation. An independent review panel, appointed by the Assistant Secretary—Indian Affairs, will evaluate applications against the criteria and the terms and conditions contained in this announcement, including any statutory or regulatory requirements. Incomplete applications or applications which do not conform to this announcement will not be reviewed; i.e., an application lacking a single agency audit report. Such applications will be returned to sender as non-responsive and the applicant shall have no appeal rights. All other decisions made by the Bureau regarding the applications are appealable under the provisions of 25 CFR part 2.

Applications will be reviewed and rated as follows:

1. The goals/objectives of the grant are scheduled and measurable and are consistent with the purpose of this annoucement; (35)
2. Grant objectives are fully and clearly described and reflect the needs of the tribe and its members; (20)
3. The grant objectives can be accomplished with the resources requested and/or available and the application indicates who will accomplish each objective; (15)
4. The application contains evidence of capability and qualifications, i.e., resumes and position description of key project staff are a part of the application; and (15)
5. A line item budget is accompanied by a detailed justification for each expenditure; and the cost of the expenditure is reasonable and allocable to the proposed agreement and allowable in accordance with OMB Circular A–87, Cost Principles for State and Local Governments. (15)

G. *Submission of Applications:* 1. The closing date for applications submitted for this announcement is (insert date 30 days from publication in the **Federal Register**);

2. Applications may be mailed or hand-delivered;

a. Applications which are mailed must be postmarked no later than midnight on April 2, 1990.

b. Applications which are hand-delivered, must be received at the address and room referenced below no later than the close of business on April 2, 1990;

c. Late applications will not be considered for funding;

3. Applications shall be mailed or hand-delivered to:

Bureau of Indian Affairs, Attention: Deputy to the Assistant Secretary—Indian Affairs (Tribal Services), 18th and C Streets NW., Room 4600–MIB, Washington, DC 20240.

Walter R. Mills,

Assistant Secretary—Indian Affairs.

[FR Doc. 90–4661 Filed 2–28–90; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[UTU–66506]

Utah; Invitation to Participate in Coal Exploration Program, Soldier Creek Coal Company

Solidier Creek Coal Company is inviting all qualified parties to participate in its proposed exploration of certain Federal coal deposits in the following described lands in Carbon County, Utah:

T. 12 S., R. 12 E., SLM, Utah
Sec. 33, S½;
Sec. 34, SW¼.
Containing 480.00 acres

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P. O. Box 45155, Salt Lake City, Utah 84145–0155 and to J. T. Paulso, Soldier Creek Coal Company, P. O. Box I, Price, Utah 84501. Such written notice must refer to serial number UTU–66506 and must be received on or before April 2, 1990.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. A copy of the exploration plan, as submitted by Soldier Creek Coal Company, is available for public review during normal business hours in the BLM office, (Public Room, Fourth Floor), 324 South State Street, Salt Lake City, Utah under serial number UTU–66506.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90–4636 Filed 2–28–90; 8:45 am]

BILLING CODE 4310–DQ–M

[UTU–66524]

Utah; Invitation to Participate in Coal Exploration Program; Utah Power and Light Company

Utah Power and Light Company is inviting all qualified parties to participate in its proposed exploration of certain Federal coal deposits in the following described lands in Emery County, Utah:

T. 17 S., R. 6 E., SLM, Utah
Sec. 21, E½, E½W½;
Sec. 22, all;
Sec. 23, all;
Sec. 24, W½W½;
Sec. 25, N½NW¼;
Sec. 26, W½SW¼NE¼, NW¼, N½SW¼, W½NW¼SE¼, N½NE¼;
Sec. 27, N½, N½S½;
Sec. 28, all;
Sec. 29, E½SE¼;
Sec. 32, E½;
Sec. 33, all.
Containing 4,459.80 acres

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155 and to David Smaldone, Utah Power and Light Company, P.O. Box 26128, Salt Lake City, Utah 84126–0128. Such written notice must be received on or before April 2, 1990.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. A copy of the exploration plan, as submitted by Utah Power and Light Company, is available for public review during normal business hours in the BLM office (Public Room, Fourth Floor),

324 South State Street, Salt Lake City, Utah, under Serial Number UTU–66524.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90–4637 Filed 2–28–90; 8:45 am]

BILLING CODE 4310–DQ–M

[AZ–020–09–4213–01]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the Phoenix District Advisory Council Meeting.

DATES: March 30, 1990, 9 a.m.

ADDRESSES: 2015 West Deer Valley Road, Phoenix, Arizona 85027.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets Friday, March 30, 1990. The meeting will be held at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona, starting at 9 a.m.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978. The agenda for the meeting includes:

—Kingman Resource Management Plan

—Wilderness Update

—BLM Management Updates

—Business from Floor

—Public Comments and Statements

—Future Meetings and Agenda Topics

SUPPLEMENTARY INFORMATION: This is a public meeting and the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters are welcome.

Dated: February 21, 1990.

Henri R. Bisson,

District Manager.

[FR Doc. 90–4659 Filed 2–28–90; 8:45 am]

BILLING CODE 4310–32–M

[WY–049–00–4370–09]

Intent To Evaluate the Desert Common—Figure Four Wild Horse Herd Area; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Evaluate the Decision to Eliminate the Desert Common—Figure Four Wild Horse Herd Area in the Pinedale and Green River Resource Areas, Rock Springs District, Wyoming, and Call for Additional Information on the Desert Common—Figure Four Wild Horse Herd Area.

SUMMARY: The BLM Rock Springs District is initiating a planning evaluation for the Pinedale Resource Management Plan (RMP) and the Management Framework Plan (MFP) for the Green River Resource Area. It is possible that the evaluation will result in amending these land use plans.

The proposed plan evaluation will reassess the issues related to the Desert Common—Figure Four Wild Horse Herd Area and the decision to no longer manage it as a wild horse herd area. The land use plan decisions also call for removing all wild horses from the area. However, total removal will not take place before the plan evaluation is completed.

This notice is also a request for any information that was not considered or available when the planning decisions were made. Any additional information that will help in analyzing the environmental impacts of eliminating the herd management area will be used in the planning evaluation.

DATES: Scoping and issue identification for the planning evaluation will begin in March 1990. The evaluation is scheduled for completion in June 1990. Public involvement and any public meetings during the evaluation process will be announced in local media and through mailings to the public and special interest groups.

ADDRESSES: Documentation of the plan evaluation will be available at the Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: If you wish to participate in the plan evaluation or wish to be placed on the mailing list, contact Alan Stein, Team Leader, Rock Springs District, at the above address or phone (307) 382–5350.

SUPPLEMENTARY INFORMATION: The Rock Springs District has three wild horse management areas and part of a fourth (in addition to the Desert Common—Figure Four Area). These wild horse herd areas are managed to maintain a population of approximately 1,500 wild horses.

The Desert Common—Figure Four Wild Horse Herd Area was originally to be managed for a population of 100 wild horses; 25 in the Green River Resource Area, and 75 in the Pinedale Resource Area. The proposal to eliminate the Desert Common portion of the herd management area was clearly presented in the draft and final Environmental Impact Statements (EIS's) for the Pinedale RMP. A separate environmental assessment (EA), timed to coincide with the Pinedale RMP, covered the Figure Four portion of the herd management area in the Green River Resource Area.

The final RMP/EIS for the Pinedale Resource Area was released to the public in late 1987. Through the RMP process, the public was provided the opportunity to comment on and to protest the proposed RMP decisions. No comments on wild horses were received. The Record of Decision and the approved Pinedale RMP were issued in December 1988 and included the decision to eliminate the herd management area. While the Figure Four portion of the herd area was established as an interim herd management area, experience has shown that the wild horses do not stay in the area.

Since the decisions to remove the horses from and to eliminate the Desert Common—Figure Four Herd Area were made, inquiries have resulted in the need to evaluate the decisions. At this time, it has not been decided if the planning decisions need to be changed. Amendments to existing land use plans are protestable under the planning regulations (43 CFR 1600 through 1610).

Dated: February 22, 1990.

F. William Eikenberry,

Associate State Director.

[FR Doc. 90–4712 Filed 2–28–90; 8:45 am]

BILLING CODE 4310–22–M

[WY–060–90–4320–12]

Casper District Grazing Advisory Board; Open Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Casper District Grazing Advisory Board.

SUMMARY: The Casper District Grazing Advisory Board will meet at 10:00 a.m. on April 3, 1990. The meeting will convene at the Casper District Office, 1701 East "E" Street, Casper, Wyoming.

The agenda will include: (1) A progress report on range improvement projects; (2) a presentation and approval of proposed range improvement projects; (3) a report on allotment management plans by each resource area; and (4) any other items raised for discussion by the Board or members of the public. The public comment portion is scheduled for 11:00 a.m. April 3, 1990. Interested persons may testify or submit written statements for board consideration.

DATES: April 3, 1990 at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: To request summary minutes or time on

the agenda, contact: Kate DuPont or Bruce Daughton, Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper Wyoming 82601, (307) 261–7600.

SUPPLEMENTARY INFORMATION: The meeting is held in accordance with section 3, Executive Order 12548 of February 14, 1986. The meeting is open to the public.

Summary minutes of the Board meeting will be maintained in the district office and will be available for public inspection within 30 days following the meeting.

Dated: February 23, 1990.

James W. Monroe,

District Manager.

[FR Doc. 90–4714 Filed 2–28–90; 8:45 am]

BILLING CODE 4310-22-M

[CA–010–09–1520–10; Casefile CA 26081]

Realty Action; Exchange of Public and Private Lands in Kern and Tulare Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—CA 26081.

SUMMARY: The following described public lands are being considered for exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Note: Not all of the following lands will be exchanged. Some parcels may be dropped due to environmental concerns. Sufficient public land will be used in the exchange to equalize the value of the private land to be acquired.

Tract No.	Legal description	Acres
	T.25S., R.32E., MDM	
1	Sec. 35 Lots 12, 13, 15, 16, 23, 25, 26	42.87
2	Sec. 35 Lots 22, 27	9.49
3	Sec. 35 Lots 21, 28	14.21
4	Sec. 35 Lots 9, 10, 11, 17, 18	33.71
5	Sec. 35 Lots 19, 31	9.52
	T.25S., R.33E.	
6a	Sec. 21 E1/2NE¼NW¼NE¼, SW¼NE¼NW¼NE¼, S½NW¼NW¼NE¼, W½SW¼NW¼NE¼, SE¼SW¼NW¼NE¼, SE¼NW¼NE¼, E½NE¼NE¼NW¼, SW¼NE¼NE¼NW¼, SE¼SW¼NE¼NW¼, SE¼NE¼NW¼	50
6b	Sec. 21 N½NW¼NE¼NW¼, NE¼NE¼NW¼NW¼	7.5
6c	Sec. 21 N½NW¼NW¼NW¼, SW¼NW¼NW¼NW¼, SW¼NW¼NW¼, NE¼SE¼NW¼NW¼, S½SE¼NW¼NW¼	25
6d	Sec. 21 SE¼NE¼NE¼SE¼	2.5
6g	Sec. 21 SE¼NW¼NE¼SE¼	2.5
	T.25S., R.34E.	
8	Sec. 34 E½NW¼NE¼NW¼, NE¼SW¼NE¼NW¼	7.5
9	Sec. 34 NW¼NW¼NW¼NW¼	2.5
10	Sec. 34 NW¼SE¼NW¼NW¼	2.5
11	Sec. 34 SE¼NE¼SW¼NW¼	2.5
12	Sec. 34 NE¼NW¼SE¼NW¼	2.5
13	Sec. 34 SW¼SE¼SE¼NW¼	2.5
	T.26S., R.32E.	
14	Sec. 12 SE¼NW¼SE¼SW¼	2.5
15	Sec. 12 NW¼SE¼SE¼SW¼	2.5
16	Sec. 12 SE¼SE¼SE¼SW¼	2.5
17	Sec. 12 SW¼SW¼NE¼SE¼	2.5
18	Sec. 12 NE¼SE¼NE¼SE¼	2.5
19	Sec. 12 NE¼NW¼SW¼SE¼	2.5
20	Sec. 13 Lot 2	2.10
21	Sec. 13 Lot 5	2.08
22	Sec. 13 Lot 6	2.05
23	Sec. 13 Lot 4	2.11
	T.26S., R.33E.	
26	Sec. 21 SW¼NW¼SE¼SE¼	2.5
27	Sec. 21 NE¼SE¼SE¼SE¼	2.5
28	Sec. 21 SW¼SE¼SE¼SE¼	2.5
	T.26S., R.34E.	
29	Sec. 8 W½SE¼	80
30	Sec. 9 W½NW¼	80
31a	Sec. 24 NE¼SW¼	40
31b	Sec. 24 W½SW¼SW¼, SE¼SW¼SW¼SW¼, SW¼SE¼SW¼SW¼	10
32	Sec. 24 S½NE¼SW¼SW¼, NE¼SE¼SW¼SW¼, NW¼SW¼SE¼SW¼	10
33	Sec. 24 SE¼SW¼SE¼SW¼	2.5
34	Sec. 24 NW¼SW¼SW¼SE¼	2.5
35	Sec. 28 SW¼NE¼	40
	T.30S., R.34E.	
36	Sec. 6 Lot 1	40.18
	T.32S., R.33E.	
37	Sec. 8 NE¼SE¼	40
	T.12N., R.15W., SBM	
38	Sec. 32 SE¼NE¼	40
39	Sec. 32 Lot 6	41.66
	T.11N., R.15W.	
40	Sec. 2 S½NE¼	80

Containing 754.98 acres of public land in Kern County.

In exchange for some of the above lands, the United States will acquire the following private lands from The Trust for Public Land, a private, nonprofit organization.

T.24S., R.36E., MDM
Sec. 25 S½NW¼, N½SW¼
T.24S., R.37E.
Sec. 5 S½SE¼
Containing 240 acres of private lands in Tulare County.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire lands in the Lamont Meadow area with important scenic riparian values and lands in the Chimney Peak area as an administrative site with access to the Sacatar wilderness study area (recommended suitable for wilderness status)..

A secondary purpose of the exchange is to consolidate the Bureau lands and reduce the number of scattered, isolated Bureau parcels that are difficult for the Bureau to manage. The public interest will be well served by completing the exchange.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws, and mining laws. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first.

The exchange will be on an equal value basis. An independent appraisal will establish the fair market value of the public and private lands. Acreage of the public land will be adjusted to approximate equal values. Full equalization of value will be achieved by a cash payment from the Trust, not to exceed 25 percent of the value of the public lands.

Land transferred from the United States will retain the following reservations:

A right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945). This reservation will apply to all tracts in the exchange.

On tract 35, the west half of this tract will be subject to a permanent covenant restricting dwellings, buildings, and other substantial improvements, due to flooding hazard, under the authority in section 3(d) of Executive Order 11988 of May 24, 1977 and in section 206 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716).

FOR FURTHER INFORMATION CONTACT: Dan Vaughn, Bureau of Land Management, Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861–4236.

DATES: Interested parties may submit comments to the Area Manager, Caliente Resource Area Office, Bureau of Land Management, at the above address until April 16, 1990. Any objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: February 12, 1990.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 90–4026 Filed 2–28–90; 8:45 am]

BILLING CODE 4310-40-M

[NM-010-4212-11/GPO-0103; NM NM 80895, NM NM 81404]

Albuquerque District Office, New Mexico; Realty Action—Termination of Classification and Sale of Public Land in San Juan County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of termination of Recreation and Public Purpose classification for case NM NM 80895 and proposed non-competitive public land sale NM NM 81404 located in San Juan County.

SUMMARY: This action terminates the Recreation and Public Purpose classification for case NM NM 80895 (as described below) in its entirety upon publication in the **Federal Register**.

The following described lands have been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than fair market value.

New Mexico Principal Meridian

T. 29 N., R. 9 W.,
Sec. 17, E½NW¼SE¼NW¼.
Containing five acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. The lands are not needed for Federal purposes.

The land is to be sold non-competitively to San Juan County. The purpose of this sale is to aid San Juan County by providing land for construction and operation of a solid waste compactor/transfer station.

Excepting and Reserving to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Albuquerque District Office.

3. All valid existing rights which are more particularly described and are of record in the Bureau of Land Management, Albuquerque District Office, 435 Montano NE., Albuquerque, NM 87107.

ADDRESSES: Detailed information concerning the sale is available for review at the Bureau of Land Management, Farmington Resource Area, 1235 La Plata Highway, Farmington, New Mexico 87401.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Albuquerque District Office, 435 Montano Road NE., Albuquerque, NM 87107.

Any adverse comments will be evaluated by New Mexico State Director, who may sustain, vacate or modify this realty action and issue a final determination. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Jerrold E. Crockford, Bureau of Land Management, Farmington Resource Area, 1235 La Plata Highway, Farmington, New Mexico 87401 (505) 327-5344.

Dated: February 23, 1990.

Robert T. Dale,

District Manager.

[FR Doc. 90-4638 Filed 2-28-90; 8:45 am]

BILLING CODE 4310-FB-M

[CA-940-00-4212-13; CACA 20078]

California; Realty Action; Exchange of Public and Private Lands in Riverside County and Order Providing for Opening of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and opening order.

ADDRESSES: Inquiries concerning the land should be addressed to the Chief, Branch of Adjudication and Records, Bureau of Land Management, California State Office, 2800 Cottage Way (room E-2841), Sacramento, California 95825.

SUMMARY: The purpose of this exchange was to acquire a portion of the non-Federal lands within the proposed 13,030 acre preserve for the Coachella Valley fringe-toes lizard. The lizard is Federally listed as threatened and state listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres within the preserve. The land being acquired does not constitute habitat for the lizard, but provides a sand source required for the continuing produciton of active sand dune areas that are critical habitat for the lizard. Other State or Federal agencies will acquire the remaining portion of the preserve. The public interest will be well served by this exchange. The land acquired in this exchange will be opened to opperation of the public land laws and to the full operation of the United States mining and mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Joan Mangold, California State Office, (916) 978-4820.

1. The United States issued a land exchange conveyance document to The Nature Conservancy on June 22, 1989, pursuant to the authority of section 206 of the Act of October 21, 1976 (43 U.S.C. 1716) for the following described public land:

San Bernardino Meridian, California

T. 2 S., R. 5 E.,
Sec. 36, lots 1 to 6, inclusive, and lots 10 to 13, inclusive.
The area described contains 147.60 acres in Riverside County.

2. In exchange for the land described in paragraph 1, on June 22, 1989, the United States accepted title to the following described private land from The Nature Conservancy:

San Bernardino Meridian, California

T. 4 S., R. 6 E.,
Sec. 14, E½NE¼sand NE¼NW¼NE¼.
EXCEPT that portion in Thousand Palms Canyon Road (88 feet wide) conveyed to the County of Riverside by deed recorded December 12, 1960, in Book 2813, Pages 197, 211, and 269 thereof, as Instrument No. 101753 of Official Records of Riverside County, California.
The area described contains 90 acres in Riverside County.

3.The values of the Federal public land and non-Federal land were equalized by the procedures set forth in the Memorandum of Agreement dated December 10, 1987.

4. At 10 a.m. on April 9, 1990 the lands described above in paragraph 2 shall be open to the operation of the public land laws generally, subject to valid existing rights, and the requirements of applicable law. All valid application sreceived at or prior to 10 a.m. on April 9, 1990 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 10 a.m. on April 9, 1990 the land described in paragraph 2 above shall be opened to location under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of opening is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United

States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 10 a.m. on April 9, 1990 the land describe in paragraph 2 above shall be open to applications and offers under the mineral leasing laws.

Dated: February 21, 1990.

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 90-4655 Filed 2-28-90; 8:45 am]

BILLING CODE 4310-40-M

Realty Action (I-22680); Private Exchange Involving Public Lands in Clark, Fremont and Jefferson Counties, ID

AGENCY: Bureau of Land Management, [ID-030-00-4212-13].

ACTION: Private Exchange Involving Pulic Lands in Clark, Fremont and Jefferson Counties, Idaho.

The following described public land has been found suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 43 U.S.C. 1716):

Boise Meridian, Idaho

T. 7 N., R. 37 E.
Sec. 14, NW¼NW¼.
T. 8 N., R. 38 E.
Sec. 31, S½SE¼.
T. 13 N., R. 38 E.
Sec. 22, NE¼NE¼.

The area described contains 160 acres, more or less.

The above described public lands will be segregated from entry appropriation, the public land laws and the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent to the exchange proponent or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

In exchange for these lands the United States will acquire the following described lands in Fremont and Jefferson Counties, Idaho from R. Hillman and Sons:

Boise Meridian, Idaho

T. 7 N., R. 37 E.
Sec. 23, NW¼NW¼.
T. 8 N., R. 38 E.
Sec. 27, E½NW¼.
T. 8 N., R. 39 E.
Sec. 18, lots 1 and 2.

The area described contains 186.43 acres, more or less.

BLM proposes to exchange public land in Clark, Fremont and Jefferson Counties, Idaho for private land in Fremont and Jefferson Counties, Idaho located within or adjacent to several areas of special designation. This exchange is consistent with BLM and local planning for the lands involved. The public interest will be well served by completing the exchange.

The proponent has waived the difference in value of the lands to be exchanged.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, (26 Stat. 391; 43 U.S.C. 945).

The patent will also be issued subject to:

1. A right-of-way described under Serial Number I-3839 for a road issued under 44 LD 513 (1917) on Parcel 3.

2. A right-of-way described under Serial Number I-19666 for an electric powerline issued under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) on Parcel 1.

3. A right-of-way described under Serial Number I-22461 for a road issued under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) on Parcel 1.

Detailed information concerning the exchange, including the environmental assessment is available for review at the Idaho Falls District, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

Before and on April 16, 1990, interested parties may submit comments to the District Manager, Idaho Falls District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of Interior.

Dated: February 21, 1990.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 90-4656 Filed 2-28-90; 8:45 am]

BILLING CODE 4310-GG-M

[OR-030-00-4320-02; GPO-134]

Vale District Grazing Advisory Board; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given in accordance with Pub. L. 92-463 that a meeting of the Vale District Grazing Advisory Board will be held March 29, 1990.

The agenda of the meeting will include: Status of the Lazy T seeding, Trout Creek Mountains Geographical Emphasis Area update, Policy for grazing use of public lands if drought conditions persist, Grazing Advisory Board seed and use of the Vale District warehouse, Release of Board member names and addresses to outside groups, Update on the District's wilderness program, and Noxious weed control plans.

The meeting is open to the public. Interested persons may make oral statements to the Board or may file written statements for the Board's consideration. Anyone wishing to make oral statements may do so at 1:30 p.m. the day of the meeting.

Summary minutes of the Board's meeting will be maintained in the district office and will be available for public inspection, or personal copies may be purchased for the cost of duplication, within 30 days of meeting.

DATES: The meeting will begin at 10 a.m. March 29, 1990.

ADDRESSES: The meeting will be held in the conference room of the Vale District Office, 100 Oregon Street, Vale, OR 97918.

FOR FURTHER INFORMATION CONTACT: Gerard Hubbard, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97917 (Telephone 503 473-3144).

William C. Calkins,

District Manager.

[FR Doc. 90-4718 Filed 2-28-90; 8:45 am]

BILLING CODE 4301-33-M

[NM-040-00-4212-11; OK NM 68894]

Classification of Public Lands in Pittsburg County, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Recreation and Public Purpose (R&PP) Classification; Oklahoma.

SUMMARY: The following described public land in Pittsburg County, Oklahoma has been examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

Legal Description

Indian Meridian

T. 5 N., R. 15 E.,
Sec. 10: Kerbs Townsite,
Block 59, Lots 1 & 2,
Containing 0.50 acres.

The lands were examined in response to R&PP application, Serial Number OK NM 68894, filed by the City of Krebs, to use the lands for city park and facilities. The suitability is based on the following reasons:

The lands are not needed for Federal purposes. Conveyance is consistent with current Bureau of Land Management (BLM) land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

3. All valid existing rights documented on the official public land records at the time of patent issuance.

Detailed information concerning this action is available for review at the office of the Bureau of Land Mangement, Oklahoma Resource Area, 200 NW Fifth St., Room 548, Oklahoma City, Oklahoma 73102.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveynance or classification of the lands to the Bureau of Land Management, District Manager, Tulsa District Office, 9522–H E. 47th Place, Tulsa, Oklahoma 74145. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Jacqueline Gratton, Realty Specialist, Oklahoma Resource Area, (405) 231–5491.

Dated: February 20, 1990.

Jim Sims,

District Manager.

[FR Doc. 90–4717 Filed 2–28–90; 8:45 am]

BILLING CODE 4310–FB–M

Bureau of Reclamation

Proposed Los Vaqueros Project, Contra Costa County, CA

AGENCY: Bureau of Reclamation (Interior).

ACTION: Correction of notice of intent to prepare a draft Enviromental Impact Report/Environmental Impact Statement.

SUMMARY: The notice of intent to prepare a draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Los Vaqueros Project published in the **Federal Register** (Volume 55, No. 21, Page 3279) on January 31, 1990, was incorrect. The following is the correct Notice of Intent. Note that the scoping sessions will be held in April, not March.

Pursuant to section 102 (2) (C) of the National Environmental Policy Act (NEPA) of 1969 (as amended) and section 21002 of the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the Contra Costa Water District (CCWD) intend to prepare a joint Environmental Impact Report/ Environmental Impact Statement (EIR/ EIS) for the Los Vaqueros Project, California. The U.S. Army Corps of Engineers (COE), Sacramento District, will be a cooperating agency and will rely on the EIR/EIS to issue certain permits that may be required. The primary purposes of the project would be to improve the quality of water supplied to CCWD customers, minimize seasonal quality changes, and improve the reliability of the CCWD supply by providing for emergency storage. Secondary purposes of the project are to provide flood control benefits, maintain and enhance fish and wildlife resources, and offer recreational opportunities.

FOR FURTHER INFORMATION CONTACT: Mr. John S. Greg, Assistant General Manager, Contra Costa Water District, P.O. Box H20, Concord, California 94524, telephone: (415) 674–8000; or Mr. Douglas Kleinsmith, Bureau of Reclamation, Mid-Pacific Region, 2800 Cottage Way, Sacramento, California 95825–1898, telephone: (916) 978–5121.

SUPPLEMENTARY INFORMATION: CCWD is proposing to construct a reservoir on Kellogg Creek, south of the city of Brentwood in southeastern Contra Costa County. The project would consist of a reservoir with about 100,000 acre-feet of storage for CCWD, a new point of diversion in the Sacrament-San Joaquin Delta (possibly in conjunction with the current Rock Slough diversion point), associated water conveyance and delivery facilities, pumping plants, and other facilities. The project would require the realignment of Vasco Road, an important county arterial roadway that would be inundated by the project, and relocation of several buried pipelines and electrical power transmission lines.

The Los Vaqueros Project would be built and operated by CCWD. CCWD may seek an amendment to its existing Water Service Contract I75r–3401 (amended) with Reclamation to accommodate operation of the Los Vaqueros Project and certain repayment conditions. Accordingly, Reclamation is serving as the lead federal agency responsible for NEPA compliance on the proposed project. The COE will be a cooperating agency. The CCWD-only project includes a dam up to approximately 205 feet high and a reservoir which covers up to about 1,640 acres. The total cost for the CCWD-only project is estimated at $350 million in 1988 dollars. Alameda County Flood Control and Water Conservation District Zone 7 (Zone 7) may participate in the project, which would increase storage by approximately 40,000 acre-feet.

CCWD has followed a staged approach to its environmental documentation for the Los Vaqueros Project as provided by CEQA. In 1986, CCWD completed and certified the Stage 1 EIR for the Los Vaqueros Project to evaluate a full range of alternative options for meeting project objectives and to identify impacts of watershed acquisition and management. At the conclusion of the Stage 1 EIR, CCWD narrowed the range of options to reservoir concepts within the Kellogg Creek watershed as the only alternatives capable of achieving in all project objectives. CCWD also is currently preparing the Vasco Road and Utility Project EIR, pursuant to State CEQA Guidelines, to assess impacts of relocating Vasco Road and several major utility facilities located in the project area. Zone 7 would prepare its own EIR to evaluate alternative ways to meet its objectives, including participation in the Los Vaqueros Project.

The proposed EIR/EIS will be the second stage (Stage 2) of the Los Vaqueros environmental documentation. It will incorporate significant findings from the Stage 1 EIR, the Vasco Road and Utility Project EIR, and the Zone 7 EIR, and will present detailed and

comprehensive evaluations of the Los Vaqueros Project and alternatives to the project.

Alternatives to the proposed Los Vaqueros Project to be evaluated by CCWD at this time include: No action, two reservoir sites within the Kellogg Creek watershed, and alternative project configurations including reservoir sites diversion facilities, conveyance facilities, pumping plants, and water sources. Additional alternatives identified during the scoping process may also be considered in the EIR/EIS if any are determined to be viable.

Primary impacts that will be evaluated in the EIR/EIS include effects on fish, wildlife, plants, water quality, water supply, hydraulics, hydrology, socioeconomics, traffic, air quality, recreation, esthetics, cultural resources, floodplains, wetlands, and growth.

Three scoping meetings have been scheduled to solicit public input to determine alternatives to the proposed project, the scope of the EIR/EIS, and to identify the significant issues related to the proposed action:

- April 12, 1990, 7 p.m., Livermore City Council Chambers, 3575 Pacific Avenue, Livermore, CA 94550
- April 17, 1990, 7 p.m., Contra Costa Water District Board Room, 1331 Concord Avenue, Concord, CA 94524
- April 19, 1990, 7 p.m., Antioch City Council Chambers, Third and H Streets, Antioch, CA 94509

Any person may participate in the scoping process by submitting written comments to CCWD or Reclamation postmarked no later than May 3, 1990. No further formal scoping activities are planned. Interested public entities and individuals may obtain information on the project from CCWD or Reclamation and provide input to the draft EIR/EIS. The draft EIR/EIS is expected to be completed and available for review and comment in summer, 1991.

Note: For those disabled persons requiring special services at the scoping meetings, contact Reclamation EEO Officer Curtis Smith at (916) 978-4911. Please notify Mr. Smith as far in advance of the meetings as possible, and no later than March 29, 1990, to enable Reclamation to secure the needed services. If a request cannot be honored, the requester will be notified. A telephone device for the hearing impaired (TDD) is not available.

Dated: February 23, 1990.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 90-4635 Filed 2-28-90; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to Fonds D'Equipement Communal, of Rabat, Morocco ("Borrower") as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Morocco. The Borrower has authorized A.I.D. to request proposals from eligible investors. The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

Morocco

Project: 608-HG-001—$8,500,000, Attention: Mr. Abdelhak Sakout, Directeur, Fonds D'Equipement Communal, Caisse de Depot et Gestion, Place Moulay Hassan, Rabat, Maroc, Telex No.: 31012, Telephone No.: 212/(7) 63884, Telefax No.: 212/(7) 63849

Interested investors should submit their bids to the Borrower's representative on Tuesday, March 13, 1990, 12:00 noon Eastern Standard Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Harry Birnholz, Housing and Urban Development Officer, c/o American Embassy, 2 Ave. de Marrakech, USAID/Rabat, RHUDO/USAID, Rabat, Morocco, Telex No.: 31005M, Telephone No.: 212/(7) 62265, Ext. 2346, Telefax No.: 212/(7) 67930

Sean P. Walsh, Agency for International Development, PRE/H, Room 401, SA-2, Washington, D.C. 20523-0214, Telex No.: 892703 AID WSA Telefax No.: 202/663-2552 (preferred communication)

For your information the Borrower is currently considering the following terms:

(a) *Amount:* U.S. $8.5 million.

(b) *Term:* Up to 30 years.

(c) *Grace Period:* 10 years on repayment of principal.

(d) *Interest Rate:* Fixed rate only.

(e) *Prepayment:* Offers should include the terms for partial or total prepayment of the loan by the Borrower specifying the earliest date the option can be exercised without penalty.

(f) *Closing Date:* Estimated 60 days from date of selection of investor

(g) *Fees:* Borrower agrees to pay all closing costs at closing from the proceeds of the loan. Lenders are requested to include all legal fees in their placement fee.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA-2, Washington, D.C. 20523-0214, Telephone: 202/663-2530.

Dated: February 26, 1990.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise Agency for International Development.

[FR Doc. 90-4801 Filed 2-28-90; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Service Order No. 1506 and Suppl. Order No. 3

New York, Susquehanna and Western Railway Corp., et al.; Authorized to Operate Tracks of Delaware and Hudson Railway Co., Debtor, (Francis P. Dicello, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1506, Supplemental Order No. 3.

SUMMARY: Supplemental Order No. 3 revises Service Order No. 1506, by authorizing The New York, Susquehanna and Western Railway Company (NYSW), Lackawanna Valley Railroad Corporation (LVAL), and North Shore Railroad Company (NSHR) to operate without Federal subsidy or compensation over certain tracks of the Delaware and Hudson Railway Company (DH) as specified in Appendix A, from 11:59 p.m. on February 23 through 11:59 p.m. on March 23, 1990, unless sooner terminated by notice that the Trustee is prepared to resume service. We are contemporaneously issuing an order amending I.C.C. Order No. 7, *Rerouting Traffic*, for the same period.

EFFECTIVE DATE: This order shall become effective at 11:59 p.m., February 23, 1990, and shall remain in effect until 11:59 p.m., March 23, 1990.

FOR FURTHER INFORMATION CONTACT: Melvin F. Clemens, Jr. (202) 275–1559

or

Bernard Gaillard, (202) 275–7849].

[TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Upon further consideration of Service Order No. 1506, and good cause appearing therefor:

It is ordered, The New York, Susquehanna and Western Railway Corporation—Lackawanna Valley Railroad Corporation—North Shore Railroad Company—Authorized to Operate Tracks of Delaware and Hudson Railway Company, Debtor, (Francis P. Dicello, Trustee)

Supplemental Order No. 3 revises Service Order No. 1506 by revising Appendix A by adding milepost designations to paragraph No. 2, by reducing the service termination notice period for the operators to 5 days instead of 10 days, and by substituting the following paragraph (i) for paragraph (i) thereof:

(i) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. on March 23, 1990, or 48 hours from the time the Trustee notifies the Commission and the interim operators that he is prepared to resume service, whichever occurs first.

Effective date. This order shall be effective at 11:59 p.m., February 23, 1990.

This action is taken under authority of 49 U.S.C. 11123(a).

This order will be served on the Trustee in Bankruptcy and the U.S. District Court for the District of Delaware (Bankruptcy Filing No. 88–342). This order shall also be served upon the Federal Railroad Administration, the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, DC, and by filing a copy with the Director, Office of the Federal Register.

Decided: February 23, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

DH Lines Authorized to be Operated by Interim Operators

1. *The New York, Susquehanna and Western Railway, Corporation:*

(a) Between Binghamton, NY (MP 612.75) and Cooperstown Junction, NY (MP 546.98) over DH owned lines;

(b) Between Binghamton, NY and Buffalo, NY over DH trackage rights; and

(c) Between Voorheesville, NY and Rouses Point, NY over DH owned lines.[1]

2. *Lackawanna Valley Railroad Corporation:*

(a) Between Wilkes-Barre, PA (MP 687) and Scranton, PA (MP 671) on DH owned lines.

3. *North Shore Railroad Company:*

(a) Between South Danville, PA and Sunbury, PA over DH owned lines.

[FR Doc. 90–4528 Filed 2–28–90; 8:45 am]

BILLING CODE 7035–01–M

[1] This line includes Voorheesville (MP 13.0) to Kenwood Yard (MP 0.0); Kenwood Yard to Mechanicville (MP 19.0); Mechanicville (MP 469.0) to Glennville (CPF 478) (track 1); Glennville (CPF 478) to Ballston Lake (CPF 24); Schenectady (MP 486) to Glennville (CPF 480) (track 1); Glennville (CPF 480) to Ballston Lake (CPC 24); and Ballston Lake (CPC 24) to Rouses Point (MP 192). Also included would be the use of D&H yards on the line as needed, and the following branch lines: Saratoga (CPC 38) to Corinth (MP 57); and Fort Edward to Glenns Falls.

[Revised I.C.C. Order No. 7 and Amendment No 1]

Rerouting of Traffic

To: All Delaware and Hudson Railway Company connections:

Upon further consideration, Revised I.C.C. Order No 7, Rerouting Traffic, is amended to extend its expiration date from 11:59 p.m., February 23, 1990, to 11:59 p.m. March 23, 1990.

It is ordered,

Revised I.C.C. Order No 7, Rerouting Traffic, is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration Date.* This order shall expire at 11:59 p.m., March 23, 1990, unless modified, amended or vacated by order of this Commission.

This action is taken pursuant to the authority of 49 U.S.C. 11124.

This order will be served on the Trustee in Bankruptcy and the U.S. District Court for the District of Delaware (Bankruptcy Filing No. 88–342). This order shall also be served upon the Federal Railroad Administration, the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, DC, and by filing a copy with the Director, Office of the Federal Register.

A copy of this order shall be filed with the Director, Office of the Federal Register.

Decided: February 23, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90–4530 Filed 2–28–90 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55; Sub-No. 325X]

CSX Transportation, Inc.; Abandonment Exemption in Lake County, IN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption and interim trail use.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904, the abandonment by CSX Transportation, Inc., of 4.88 miles of rail line in Lake County, IN, subject to standard labor protective conditions and a public use condition. In addition, interim trail use has been approved for the portion of the line within the corporate limits of Munster, IN.

DATES: Provided no formal expression of intent to file on offer of financial assistance has been received, this exemption will be effective on April 2, 1990. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 12, 1990, petitions to stay must be filed by March 16, 1990, and petitions for reconsideration must be filed by March 26, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 325X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; (2) Petitioner's representative: Patricia Vail, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service, (202) 275–1721.)

Decided: February 21, 1990.

By the Commission, Chairman Gradison, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90–4692 Filed 2–28–90; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–102 (Sub-No. 25X)]

Missouri-Kansas-Texas Railroad Co.; Exemption; Discontinuance of Trackage Rights in Labette and Cherokee Counties, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts the Missouri-Kansas-Texas Railroad Company (MKT) from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, for the discontinuance of trackage rights over an 18.39-mile segment of the Burlington Northern Railroad Company's track from milepost S–400.80 near Oswego to milepost S–419.19 near Columbus in Labette and Cherokee Counties, KS, subject to standard employee protective conditions. The Commission also approves the MKT's petition for waiver of an environmental report.

DATES: This exemption is effective on March 31, 1990. Petitions to stay must be filed by March 11, 1990. Petitions for reconsideration must be filed by March 21, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB–102 (Sub-No. 25X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; (2) Petitioner's representative: Jeanna L. Regier, Registered ICC Practitioner, Union Pacific Railroad Company, Room 830, 1416 Dodge Street, Omaha, NB 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721).

Decided: February 9, 1990.

By the Commission, Chairman Gradison, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett. Commissioners Simmons and Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 90–4693 Filed 2–28–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

February 23, 1990.

The Office of Management and Budget (OMB) has been sent the following collection of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information: (1) The title of the form/collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and, (7) an indication as to whether section 3504(h) of Public Law 96–511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated public burden and the associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633–4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Adoption of Common Rule—Part 66, Uniform Administrative Requirements for Grants and Cooperative Agreements. (2) OJP 4000/3, 4587/1, 7160/11, 7160/3. Office of the Comptroller, Office of Justice Programs. (3) On occasion. (4) State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions. The Common Rule contains information collection requirements necessary to ensure minimum fiscal control and responsibility for Federal funds and deter fraud, waste and abuse. The information collected covers pre-award, post-award, and closeout information from governmental and nongovernmental entities. (5) 1,736 estimated respondents at 52 hours each.

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[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

(6) 90,272 estimated annual burden hours. (7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 90-4719 Filed 2-28-90; 8:45 am]

BILLING CODE 4410-18-M

Drug Enforcement Administration

[Docket No. 89-55]

Monroe Drug; Hearing

Notice is hereby given that on June 16, 1989, the Drug Enforcement Administration, Department of Justice issued to Monroe Drug an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AM4255104, and deny any pending applications for renewal.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, March 28, 1990, commencing at 9:30 a.m., at the United States Tax Court, American Towers, 46 West 300 South, room 250, Salt Lake City, Utah.

Dated: February 16, 1990.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-4603 Filed 2-28-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to Section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on November 14, 1989, UPJOHN Company, 7171 Portage Road, Kalamazoo, MI 49001, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance 2,5-dimethoxyamphetamine.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 2, 1990.

Dated: February 15, 1990.

Gene R. Haislip

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-4581 Filed 02-28-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-30]

Jane W. Wuchinich, M.D.; Hearing

Notice is hereby given that on March 29, 1989, the Drug Enforcement Administration, Department of Justice, issued to Jane W. Wuchinich, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, February 28, 1990, commencing at 10 a.m., at the United States District Court, City and County Building, 1437 Bannock Street, room 300, Denver Colorado.

Dated: February 16, 1990.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-4604 Filed 02-28-90; 8:45 am]

BILLING CODE 4410-09-M

National Institute of Justice

Office of Justice Programs; Special Initiative on Drug Program Evaluations

AGENCY: National Institute of Justice.

ACTION: Notice of a special initiative on drug program evaluations.

SUMMARY: The National Institute of Justice publishes Notice of a Special Initiative on Drug Program Evaluations. This action is provided for under the terms of Public Law 100-690, Title VI, section 6091(a) (42 U.S.C.A. 3766). This action furnishes notice of the proposed Special Initiative on Drug Program Evaluations as hereafter specified.

DATES: All proposals must be received by the close of business, June 6, 1990. No extension of this date will be granted.

ADDRESSES: All proposals must be mailed or otherwise sent to: Special Initiative on Drug Program Evaluations, The Office of Communication and Research Utilization, National Institute of Justice, Room 800, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Vaccarella (at the above address). Phone (202) 272-6005. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

I. Introduction

Communities across the nation are traumatized by drug trafficking and the crime and violence associated with this criminal activity. In many of our metropolitan areas, open drug markets flourish under the eyes of neighborhood residents, outraged and indignant at the moral and physical human decay they are witnessing. Drug dealers openly and flagrantly display their wares as anxious buyers line up to purchase the many varieties of illegal substances.

As rates of violent crime increase, so do the levels of fear among citizens. Shoot-outs among rival gang members, street dealers, and mid-level drug operators for control of the drug market increase the hazards for police and residents. Clearly, the quality of life in these communities has diminished.

We know from the National Institute of Justice's (NIJ) Drug Use Drug Forecasting Program (DUF) that more than half of those arrested for serious crime in our major cities test positive for drug use. In addition, record numbers of drug-related homicides in cities like Washington, DC., have created widespread fear and concern.

While there is encouraging evidence that a variety of law enforcement and criminal justice techniques—such as crackdowns, buy-busts, stings, use of civil abatement laws, seizure of property, special drug courts, specialized prosecutorial case handling, shock incarceration and boot camp correctional programs, citizen patrols, block watches, and direct resident participation in community anti-drug abuse interventions—can rid the streets temporarily of drug dealers and drug users, we have yet to determine their long-term effectiveness and their overall impact on the drug problem.

With these issues in mind, Congress passed the Anti-Drug Abuse Act of 1988 (Pub.L. 100-690), which provides Federal financial assistance to States and localities for increased anti-drug abuse efforts. This assistance, in the form of formula grants distributed by the Bureau of Justice Assistance (BJA), is designated by the Act for

implementation of programs (such as those mentioned above) which improve the enforcement of State and local drugs laws, and State and local criminal justice systems that have an emphasis on violent crime and serious offenders. Under the Act, States are required to develop a State-wide plan which describes their anti-drug abuse strategy and how the formula funds are to be utilized to support this strategy.

In addressing questions pertaining to the effectiveness and impact of promising State anti-drug abuse programs and strategies, Congress determined that objective, independent evaluations can significantly contribute to national drug control efforts. To insure that such evaluations are performed, Congress mandated that the National Institute of Justice (NIJ) conduct evaluations of a selected number of State and local efforts, and to report annually on their impact. This initiative represents NIJ's response to that mandate.

II. Scope

The focus of this solicitation is to fund evaluations of State and local anti-drug abuse programs funded by the BJA Grant Program. Major goals of this effort are: To determine whether these programs are meeting their intended objectives, to assess innovative programs that show a high potential for replication, and to examine programs which demonstrate a substantial community awareness or involvement.

It is NIJ's intent to conduct these evaluations with the purpose in mind that the results will add to our national knowledge base on "what works" against drug abuse and drug trafficking. NIJ also believes that new perspectives and concepts need to be tested. Therefore, NIJ encourages officials to adopt problem-oriented approaches that extend beyond traditional agency boundaries in order to devise effective solutions to local drug problems. Applicants, therefore, should consider collaboration with universities and other social service delivery systems in defining problems, enlisting community support to increase resources, and using, for example, innovative ways that administrative, civil, and tax laws can be brought to bear on this problem. NIJ is also seeking evaluation proposals that attempt to show a return on the public investment allocated to anti-drug abuse efforts.

All evaluations proposed, must assess the program's impact on drug and crime problems described. Impact(s) should not only be measured by the variety of traditional statistics and indicators such as: Crime rates, fear of crime, recidivism, drug test results, but should also include new and innovative measures which focus on the problem-oriented nature of anti-drug abuse efforts and strategies.

Additionally, where possible, efforts should include collection of data on the number of victims of drug related violence and the extent to which law enforcement assists victims, provides for their protection or refers them to victims services. All measures proposed and the rationale for choosing them should be fully articulated in the evaluation design.

Prospective applicants should become familiar with the following: The list of twenty-one program areas eligible for support by BJA cited in 42 U.S.C.A. 3751(b), the BJA Fiscal 1990 *Drug Control and System Improvement Formula Grant Program: FY 1990 Program Guidance and Application Kit*, and the NIJ publication, *Evaluation Guidelines: Evaluating Drug Control and System Improvement Projects.*

It is important to note that programs to be evaluated should show promise of making a significant contribution to our national fight against drug abuse and drug trafficking. Topics include, but are not limited to, programs that interdict and disrupt street drug sales, that curb addiction and drug-related crime among offenders under correctional supervision, that demonstrate innovative prosecutorial case handling, that prevent the spread of drugs in our schools, that deter recreational drug abuse, and that punish and deter drug law violators. Programs to be evaluated should have current or previous support from BJA; however, innovative programs with the potential for wide-scale criminal justice application will also be considered.

III. Eligibility

Eligible applicants include: Universities, agencies involved in criminal justice process, non-profit research organizations, and profit-making organizations that are willing to waive their fee or profit.

IV. Level and Duration of Funding

The level of funding for these evaluations will be up to $2 million dollars. In fiscal year 1989, NIJ awarded 14 grants to evaluate BJA supported programs with the range of funding between $50,000 to $500,000. It is anticipated that evaluation efforts will be for an eighteen (18) to twenty-four (24) month duration.

V. Application Requirements and Procedures

The deadline of June 6, 1990 should be sufficient to allow all applicants to comply with an important prerequisite for submission: The inclusion in the application of written assurances from all local criminal justice and other agencies or personnel whose cooperation in the project will be necessary to assure full and satisfactory implementation of evaluation designs.

Applicants should submit ten (10) copies of their proposal. Submissions must include:

(1) Abstract of the full proposal, not to exceed one page.

(2) Description of the project to be evaluated specifying all essential program elements or changes in procedures and who is/will be responsible for implementing these elements or changes.

(3) Written assurances of the intent to participate in this project and cooperate with the evaluation effort from all necessary local participants.

(4) Description of the research design and methodology for the evaluation of the project's effectiveness, including data gathering methods and analysis plan to be used.

(5) Statement of the applicant's qualifications, intended management plan, task plan (including task timetable), products to be produced, and résumés of named, primary researchers should be appended. Statements regarding the research team should indicate the variety of skills to be used, a description of the relevant research experience, educational background, experience in dealing with State and local decision-makers and the demonstrated ability to produce a final product that is readily comprehensible and usable.

(6) A fully executed Federal Assistance Form 424 with cost estimates by budget categogy including time commitments from key project personnel and short narrative explanation of budgeted costs. The budget should outline all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and overhead. Percentage of time and man-months of effort to be devoted by principal staff should also be included.

(7) In addition to Form 424, three recent requirements involve certification regarding (1) debarment, (2) drug-free workplace (3) lobbying. Certification forms can be obtained by contacting the NIJ Program Manager. It should be noted that there are separate debarment forms for direct recipients and for subrecipients and separate drug-free workplace forms for individuals and other applicants. Certification regarding lobbying pertains to grants, contracts, or cooperative agreements of $100,000 or more.

VI. Review Procedures

The selections from among competing applications will be made on the basis of the following criteria by a panel of

consultants, including both knowledgeable researchers and members of the criminal justice professional community. Under law, the Director has sole authority for awarding grants. Thus, panel assessments of the program submissions, together with the Institute program manager's assessments, are submitted for consideration by the Director.

The following criteria are used to assess proposals:

1. Cooperation of the Participant Jurisdiction

Satisfactory evidence of the intended cooperation of all parties in the local site of the project to be evaluated must be given. A discussion of the legal ramifications, and/or impediments to implementing any suggested changes, along with the proposed solutions to any such problems will be considered. Applications which fail to demonstrate this access and cooperation will not be considered further.

2. Technical Merit of the Project Design

All essential elements of the proposed project research design, including the primary objectives to be achieved, anticipated changes in existing procedures to be effected and the nature of the involvement of all participating agencies or personnel in the local evaluation site, should be fully described. Evidence of an understanding of the evaluation issues involved and any problems which may be potentially involved in the undertaking itself will be considered. The potential significance and utility of the evaluation proposed will also be considered.

Reviewers take into account the logic and timing of the research plan, the validity and reliability of measures proposed, the appropriateness of statistical methods to be used, and the applicant's awareness of factors that might dilute the credibility of the findings.

3. Qualifications of the Proposed Research Team and Adequacy of the Management and Staffing Plan

Both individual expertise and the appropriateness of the mix of skills represented on the research/evaluation team will be considered. Additionally, it is important to note that the management plan is a critical and integral part of the evaluation effort and will be weighed accordingly. Information demonstrating the applicant's ability to complete successfully a comparable effort will be considered, as will the feasibility of the proposed project timetable. The comprehensiveness and clarity of the proposal will be used as an indication of the applicant's ability to communicate clearly and effectively.

4. Adequacy of Cost Estimates

Budget estimates will be assessed to determine if the applicant has estimated the total project costs realistically and allocated these costs among particular sub-categories in an efficient manner. Projected costs will be assessed as they relate to proposed tasks (workplan), the researcher qualifications, and the management plan.

James K. Stewart,

Director, National Institute of Justice.

T. March Bell,

Acting General Counsel, Office of Justice Programs.

[FR Doc. 90-4607 Filed 2-28-90; 8:45 am]

BILLING CODE 4410-36-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs.

Date & Time: March 19, 1990, 8:30 a.m.—6 p.m. March 20, 1990, 8:30 a.m.—5 p.m.

Place: National Science Foundation, room 540, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: March 19, 1989, 8:30 a.m.—6 p.m., Open—March 20, 1990, 8:30 a.m.—5 p.m.

Contact Person: Dr. Peter E. Wilkniss, Division Director, Division of Polar Programs, room 620, National Science Foundation, Washington, DC 20550. Telephone: 202/357-7766.

Purpose of Committee: Serves to provide expert advice to the U.S. Antarctic Program and the Arctic Program, including advice on science programs, polar operations support, budgetary planning, and polar coordination and information.

Agenda

March 19, 1990

0830: Opening, welcome and introductions; Discussion and approval of 3/89 minutes; Remarks by the Director—Vestal;
0900: Assistant Direcator GEO Dr. Corell, CES cross cut and related issues
0930: Information of polar interest from the Division:
DPP budget information—Wilkniss
Palmer oil spill and future of Palmer Station—Penhale, Sutherland
Other environmental issues and update—Draggan, Staffo, Forhan
RVIB—Sutherland
Science Section report—DeLaca
NOZE, UV-Biology, Ballooning, ARCSS, General report of 89/90 Antarctic field season
Operations Report for 89/90 ice season—LaCount
PCI report and tourist update—Talmadge
Safety, Environment and Health Initiative and Report—Staffo, Forhan
1200: Lunch
1300: Continue reports
1500: Director Bloch
1530: Break
1545: Education and Human Resources in Polar Science Section
1730: Conversation Video—Talmadge
1745: Adjourn

March 20, 1990

0830: Discussion of DPP Long Range Plan/ Vestal, DeLaca
0900: Reports of ARCSS Workshops—Meier
1000: Break
1015: Preliminary reports of Science and Operations Reviews and Directions—Meir, Martin
1200: Lunch
1300: Finish previous discussions and reports; General discussions of previous subjects; Proposed resolutions/recommendations/ votes
1500: Break
1515: Continue discussions and votes
1700: Adjourn

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-4633 Filed 2-28-90; 8:45 am]

BILLING CODE 7555-01-M

Committee of Visitors for Polar Programs; Meeting

The National Science Foundation announces the following meeting:

Name: Committee of Visitors.

Date & Time: March 21 & 22, 1990. 8:30 a.m.–5 p.m. Wednesday. 8:30 a.m.–3 p.m. Thursday.

Type of Meeting: Closed.

Contact Person: Dr. T.E. DeLaca, Head, Polar Science Section, Division of Polar Programs, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7894.

Committee Reports: May be obtained form the Contact Person, Dr. T.E. DeLaca, at the above address.

Purpose of Committee: To carry out Committee of Visitors review of all science programs within the Division of Polar Programs, Science Section.

Agenda: COV review of the Polar Aeronomy & Astrophysics, Polar Biology & Medicine, Polar Earth Sciences, Polar Ocean and Climate Systems, and Glaciology Programs, including examination of proposals, reviewer comments, and other privileged materials.

Reason for Closing: The Committee of Visitors' review of proposal actions will include privileged intellectual property and personal information that could harm individuals if it were disclosed and predecisional intra-agency records not available by law. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: February 26, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-4634 Filed 2-28-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-30855]

Notice of Environmental Assessment and Finding of No Significant Impact Related to Amendment of Materials License No. 29-13141-05; Department of Transportation, Federal Aviation Administration

ACTION: The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering an amendment to NRC License No. 29-13141-05 issued to the Federal Aviation Administration (FAA) regarding the use of thermal neutron activation explosive detection systems to screen airline baggage for expolosives at the concourse level of airports in the United States.

FOR FURTHER INFORMATION CONTACT: Cynthia Jones, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-0613.

Environmental Assessment

Background

Since the establishment of the Government-Industry Steering Committee on Airline Sabotage in 1962, FAA has been involved with the development of explosive detection systems (EDSs). A major conclusion of this committee was that an intensive research and development program would have to be established to address the problem and that FAA would be responsible for such an effort. As a result of a rash of hijacking incidents during the early 1970's, the U.S. Congress recognized the need to increase the overall security of the U.S. airport system. In the Anti-Hijacking Act of 1974, Public Law 93-366, FAA was assigned the responsibility for the research and development program. In the late 1970's and in the 1980's, FAA sponsored several programs to investigate and develop the use of thermal neutron technology in an EDs to detect plastic explosives in airline baggage. As a result of these efforts, FAA awarded a contract in 1985 to Science Applications International Corporation (SAIC) of Santa Clara, California, to develop and operate these systems. Since 1985, one demonstration prototype and six other smaller production models of the thermal neutron activation (TNA) system have been, or are in the process of being built for FAA.

In the TNA system, moderated neutrons from californium-252 are used to active nitrogen atoms in plastic explosives. When radiation from the decay of activated nitrogen atoms is detected, a computer attached to the system gives a warning signal indicating that explosives could be contained in the baggage. Because materials in both the baggage and its contents may be activated, both workers and the public may be exposed to the radiation emitted during the decay of the induced radioactivity. Radiation exposure, either internal or external, constitutes the major perceived impact of the system.

In 1988, the NRC staff began assessing the environemntal affects of installing and operating the prototype TNA system (Model EDS-2) at the ramp level of an airport. This included assessing scenarios for possible internal exposure of both workers and passengers, possible exposure of other members of the public who may consume irradiated food items packed in baggage, anticipated radiation doses, possible exposure resulting from malfunctions of the TNA system, and several types of plausible accidents. In February 1989, the NRC issued a license to FAA to use the prototype on the ramp level of international airports. Because Model EDS-2 was originally designed as a one-of-a-kind prototype, SAIC developed this model into the current production system (Model EDS-3), which optimizes radiation levels, cost, bulk, weight, and complexity. This system, licensed for ramp use in August 1989, uses less than half the amount of californium-252 and only one-quarter the radiation shielding than did the original prototype. For the proposed concourse installations, additional vertical shielding barriers were placed on the EDS-3 to further lower the radiation exposure to members of the public and non-TNA personnel. These barriers are sufficiently thick to reduce the penetrating radiation field to less than 1 microsievert (0.1 millirem) per hour when the system is running at peak capacity. This new concourse TNA system has been designated as Model EDS-3C and is being evaluated by the State of California.

The findings of the NRC environmental assessments associated with these two models were summarized and published in the **Federal Register** (54 FR 33636, August 15, 1989). The NRC staff concluded that the environmental effects of normal use of the TNA system in baggage- or cargo-handling ramp areas would be insignificant.

Identification of the Proposed Action

The proposed action is an amendment to Materials License No. 29-13141-05 authorizing FAA to install and operate a TNA explosive detection system for routine screening of checked baggage in concourse (or lobby) areas for inernational flights. The term "concourse area" refers to the area that is used in conjunction with passenger ticketing and baggage check-in operations and is usually located in the main terminal area. The environmental asessment includes the evaluation of the expected environmental and potential radiological impacts from operation of Model EDS-3C in the concourse areas at international airports in the United States.

The Need for the Proposed Action

The need for improved baggage security persists. The nature of the security threat today is far different from (and far more dangerous than) that in the early 1970's when screening of passengers and baggage first began. Since 1985, more than 425 lives have been lost, several aircraft have been destroyed, and international commerce has been disrupted. These recent events demonstrate the need for explosive detection systems that would help protect aircraft and the passengers and crew members aboard U.S. airline carriers.

Although the first six TNA systems are owned and operated by FAA, airline carriers rather than FAA would be using these systems. On September 5, 1989, FAA published a final rule in the **Federal Register**, which would require, by amendment of its security plan under 14 CFR 108.25, that each airline carrier use an explosive detection system that has been approved by the the FAA Administrator to screen checked baggage on international flights (54 FR 36938, September 5, 1989). So far, the only explosive detection systems that have been approved by FAA are SAIC Models EDS-3 and EDS-3C. Once this rule goes into effect, an estimated 200 to 400 TNA systems will have to be licensed in both this country and abroad.

Even though the EDS-3 is licensed for use at the ramp level of airports and has been shown to have a high sensitivity for detecting explosives in baggage, there has been some difficulty in resolving false positive ("nuisance" or "false") alarms on a small percentage of all bags inspected. These alarms are

presumed to be real until they are resolved (proven to be false). Various methods are used for resolving false alarms, but the method currently used is to open and hand search the bag, which (under FAA regulations) must be done in the presence of the passenger. At John F. Kennedy (JFK) International Airport, where the EDS–3 has been in operation at the ramp level since September 1989, there is no convenient way to contact the passenger when a piece of baggage causes the TNA system to alarm, perhaps 30 minutes or more after initial check-in. Current methods used to locate passengers at JFK International Airport have, on the average, taken approximately 1 hour.

At many intended airport sites, the only practical way to screen baggage for explosives is to locate the detection system so that it is near the area where the baggage is checked in (at the concourse level) so that the passenger is immediately available to give his or her consent to open bags causing alarms. FAA, in its continuing program to collect operating data in various airport environments, has requested that it be allowed to place a TNA system in one of four possible areas on the concourse level of airports: (1) Behind the check-in counter, (2) in front of the check-in counter, (3) at a pre-check-in area, and (4) at a curbside location near the concourse level.

Environmental Impacts of the Proposed Action

In lobby installations, the TNA system is proposed to be installed at or near the ticket counter of an international airline or at a terminal's curbside check-in area. The TNA system consists of three major pieces of equipment: The diverter, the XENIS (x-ray enhanced neutron inspection system), and the EDS–3C. The EDS–3C is the only piece that is too heavy to be installed directly on the floor without supplemental structural support. The overall area needed for the installation of the EDS–3C is approximately 41 m^2 (438 ft^2). Although the proposed site is Dulles International Airport in Washington, DC, the environmental assessment addresses the environmental impacts at a "model airport," using technical information and drawings from several major international airports.

In each of the four scenarios, an airline baggage handler would feed the baggage into the system. For each bag leaving the system, a computer would give either a "clear" or "alarm" signal. In the case of a TNA alarm, the bag would be removed to a secure area and would be opened by the security attendant with the consent of the passenger. If the passenger did not consent, neither the passenger nor the luggage would be allowed to board the airplane.

Additional construction needed at the concourse international ticket counters will affect nearby passenger traffic patterns to some degree. A structural engineering study will be required to ensure that the weight of the EDS–3C can be accommodated safely on the concourse level of airports. Airport passenger departure and arrival areas are generally built to a much higher live-load rating than the elevated floors within the airport terminal. However, because the elevated-floor structure of airport terminals will vary because of substantial differences in design, the structural requirements could change significantly from airport to airport. The exceptionally heavy loading of the EDS–3C combined with the requirement to place these systems on the concourse levels of airports creates the greatest variable in the design of an installation. It is anticipated that essential rigging equipment such as air dollies or forklifts could be moved into the terminal building during a week night or on a weekend when traffic is at a minimum. If all the necessary requirements have been met and construction has been completed, it is estimated that the moving process should take no more than 2 to 3 days.

Calculations of radiological doses for each of the four proposed scenarios resulting from potential activation of baggage contents were based on the following considerations: (1) The system is located in the concourse area where access is not controlled; (2) the californium-252 source used in the EDS–3C will always be a sealed source, which will be doubly encapsulated and seal welded in stainless steel Zircaloy; (3) the only exposure pathway considered for normal and accident scenarios is the direct radiation path; ingestion or inhalation is not considered because the source remains intact (even in the explosion scenarios); (4) the approximate screening time per bag is 6 seconds; (5) an extremely conservative estimate for a mass of 1 kilogram (2.2 pounds) was used in determining the dose rates for various elements; and (6) passengers may have access to checked baggage immediately after it leaves the EDS–3C.

For the environmental assessment, the NRC staff thoroughly investigated potential exposure pathways to worker and passengers and concluded that after a 30-second decay time, neutron activation of elements and contents in luggage does not contribute significantly to exposure resulting from natural background radiation. In view of the National Council on Radiation Protection and Measurements (NRCP) and the International Commission on Radiation Units and Measurements (ICRP) recommendations regarding the quality factor, it was assumed that neutron quality factors will be increased by a factor of 2. Therefore, in determining the neutron dose rates and doses from external exposure to neutrons presented in this assessment, the staff assumed the higher projected quality factors.

Workers such as operators, baggage handlers, ticket counter personnel, and trained security screeners may be exposed to radiation from EDS–3C operations because of the possible neutron activation of items in baggage or from the small radiation field in the area they occupy. Workers may be exposed to radiation via four different pathways: (1) Exposure during normal operation resulting from leakage fields from the californium-252 source in the immediate area of the EDS–3C; (2) direct radiation exposure to beta or gamma fields from baggage that has been through the EDS–3C; (3) exposure of security screeners resulting from the hand inspection of "suspect" irradiated baggage; and (4) exposure during the transfer of the source to or from a shipping cask. The personnel doses from the proposed TNA concourse operations are not expected to exceed 2 millisievert (2 mSv) or 200 millirem (mrem) per year. A conservative estimate of annual doses to operators, baggage handlers, ticket agents, and security screeners is less than 2 mSv (200 mrem), 1 mSv (100 mrem), 0.6 mSv (60 mrem), and 0.32 mSv (32 mrem), respectively, from direct radiation exposure. The estimated total effective dose equivalent rate from various sources of natural background radiation for the continental United States is approximately 3 mSv (300 mrem) per year (NCRP Report 94).

These estimates for doses to operators, baggage handlers, and security screeners are the same for each of the four proposed concourse scenarios. Because the only personnel that might receive a quarterly dose in excess of 25 percent of the values specified in 10 CFR 20.101 would be the operators, they would be the only persons required to wear personnel dosimetry (for neutrons and gamma rays) when working near the TNA system.

The NRC staff also assessed the potential radiation doses to passengers and nearby members of the public. The three major pathways to the public

during normal operations are (1) exposure of persons on the concourse level near the EDS–3C, (2) direct radiation exposure of passengers or members of the public to beta or gamma fields from baggage that has been through the EDS–3C, or (3) internal dose to passengers or other members of the public who consume a food or other irradiated item that was contained in the reclaimed baggage. In some cases, the passenger will not have access to his or her baggage once it has been checked by the EDS–3C; in other scenarios the passenger may have to carry his or her baggage to a different ticket counter and wait in line before receiving a ticket. Neutron activation of elements in clothing (carbon, hydrogen, nitrogen, oxygen) does not lead to significant amounts of residual activity in suitcases. Activation of the components of typical accessories is also small. Collective doses for each scenario are presented in detail in the environmental assessment and are summarized here.

In the first scenario, the EDS–3C is located behind the ticket counter where passengers currently check their baggage. Because the bags are placed onto the conveyor belt leading to the EDS–3C behind the ticket agents, the passenger is not close to the TNA system, and will not receive any additional dose. Because the bag is not returned to the passenger after inspection, there is no dose to the passengers or nearby members of the public from this pathway. Because the ticket agents might be in close proximity to the EDS–3C, each agent could receive an estimated dose of 0.6 mSv (60 mrem) from the system each year.

In the second scenario (in front of the check-in counter), only a portion of the TNA system is placed behind the ticket counter. The entrance of the TNA system is in a public area in front of the check-in counter, while the exit is behind the counter. Passengers can stand immediately next to the TNA system while waiting to drop off their baggage for EDS–3C inspection. Because the bag is not returned to the passenger after inspection, this pathway does not apply. The estimated dose to each passenger waiting in line or waiting near the EDS–3C is 1.0×10^{-2} microsievert (1 microrem) per trip. The estimated dose to a nearby member of the public walking near TNA system to another ticket counter or gate is 1.2×10^{-3} microsievert (1.2×10^{-1} microrem).

In the third scenario (pre-check-in area), the EDS–3C is placed between the terminal entrance and the ticket check-in counters. When the passenger's baggage is cleared by the TNA system, the attendant at the exist bands it with tamper-resistant security tape and returns it to the passenger. The passenger then carries the baggage to the check-in counter of the departure airline, where it is checked in for delivery to the aircraft. Passengers whose bags are being inspected come to the entrance of the TNA system, walk alongside as the bags are going through the system, and wait at the exist of the system. Other members of the public also may come close to the TNA system as they walk around the terminal. The time that the passenger must carry the slightly radioactive bag varies significantly. If for any reason the airline cancelled a scheduled flight, the passenger would be with the baggage indefinitely. This would be the worst-case scenario for this option.

The total dose rate from 1-kilogram masses of major activation products 30 seconds after EDS–3C screening is 1 microsievert (0.1 mrem) per hour. After a 10 minute decay, however, the dose rate decreases to 0.28 microsievert (0.028 mrem) per hour. Assuming 1.1 million passengers each year carried two bags from the EDS–3C to an international ticket counter and waited in line 15 minutes to get to an airline ticket agent (0.28 microsievert per hour could be used as the average dose rate), the total collective dose annually to these passengers would be 0.20 person-Sv (20 person-rem) per year per system. The individual dose to a ticket agent from this scenario would be 17 microsievert (1.7 mrem). Passengers, their entourages, and non-TNA personnel who might have to walk by the EDS–3C also could receive some radition dose. The annual individual dose to non-passengers near the EDS–3C would be 6.7×10^{-3} microsievert (6.7×10^{-1} microrem) per airport visit.

In the last scenario, the EDS–3C is placed along the departure curb outside the main airport terminal. Depending on the specific setup, the passenger might walk along the side of the system to the exit. An average dose rate of 0.3 microsievert (0.03 microrem) per hour is assumed for a duration of 10 minutes. Passengers will have to wait longer near the EDS–3C than in the in-front-of-the-check-in-counter scenario because they will have to wait for the sky-cap to tag the baggage with the claim check. This amounts to a 5.0×10^{-2} microsievert (5 microrem) dose per passenger or 5.5×10^{-2} person-Sv (5.5 person-rem) for an estimated 1.1 million passengers per year.

To assess the internal dose, the staff assumed that a 1-day supply of food was packed in a suitcase and the suitcase was screened by the EDS–3C and then claimed by the passenger 30 seconds after it left the system. The time from EDS screening to consumption of food was assumed to be 30 seconds. The total effective dose equivalent from the average daily intake of the major elements contributing the largest doses [using International Commission on Radiological Protection (ICRP) Publication 23] was determined. The dose values are the weighted committed doses for these nuclides (taken from ICRP Publication 30) that are summed over the target organs or tissues. The results show that salt is the principal source of radiation exposure from consumption of food items that have passed through the EDS–3C, and contributes about 90 percent of the effective dose equivalent. If 5 percent of the passengers carried food items in their baggage and consumed it within 30 seconds of relcaiming their baggage (after being screened by the EDS–3C), the annual collective dose to an estimated 1.1 million passengers would be 1.3×10^{-5} person-Sv (1.3×10^{-3} person-rem).

The staff evaluated the potential dose from 40 grams of gold jewelry that had passed through the EDS–3C. The total beta particle dose at a depth of 0.007 cm beneath the skin next to the jewelry was estimated to be about 23 microgray (2.3 millirad) if the item was worn continuously for approximately 10 days after the baggage was claimed. The gamma dose adds approximately 2 microsievert (0.2 mrem). ICRP has assigned a risk weighting factor for skin of 0.01; therefore, the total effective dose equivalent would be about 0.25 microsievert (25 microrem). If 1 percent of the passengers carried gold jewelry in their baggage and subsequently wore it for an extended period, the collective effective dose equivalent from this scenario would be 2.8×10^{-3} person-Sv (0.28 person-rem) per year. This dose is well below the public exposure limits recommended by ICRP. Potential doses resulting from a malfunction of the TNA system (such as a conveyor-belt breakdown, a power failure, or a baggage jam) could be larger because of a longer neutron irradiation time. The potential effective dose equivalent from wearing gold jewelry for 10 days following a long EDS–3C screening time could be as high as 0.1 mSv (10 mrem). Experience with ramp installation at JFK International Airport has shown that these irradiations are rare, usually less than one per month of operation. If this scenario occurs once each month for 40 grams of jewelry, the resulting collective effective dose equivalent is 1.2×10^{-4}

person-Sv (1.2×10^{-2} person-rem) per year.

For the purposes of environmental analysis, the impact from several different accident scenarios was assessed to selectively bound a spectrum of accidents that could occur. One scenario involved an accident and subsequent fire leading to the complete fragmentation of the californium-252 source and its dispersion to the atmospehre. The resulting maximum inhalation doses for 100-percent dispersion at distances of 50 and 100 meters would be 2.4×10^{-3} and 1.0×10^{-3} Sv (0.24 and 0.10 rem), respectively, which are well within the Environmental Protection Agency protective action guides (PAGs) of 0.25 Sv (25 rem) for emergency workers. The dose rate at 10 meters, a reasonable distance for fire control and containment, would be approximately 7.7×10^{-2} mSv (7.7 mrem) per hour. For a maximum fire-fighting time of 4 hours, the total dose to an individual would be 0.31 mSv (31 mrem). Such a dose does not exceed the PAG limit of 1-rem whole-body dose. Although the dose estimates would not necessitate offsite protective actions, FAA has implemented fire protection and emergency preparedness plans.

The scenario involving a bomb explosion resulting in a fire was assessed because it has the greatest potential for release and would bound a spectrum of other accidents that could occur. For this postulated accident, a test was conducted using 4.5 kilograms (10 pounds) of plastic explosives and a dummy (empty) source capsule simulated in an EDS–3C mockup device. The test was performed at the U.S. Bureau of Mines in 1988. The results showed that the detonation of the charge did very little damage to the polyethylene tube which contained the source capsule, although the mockup itself was completely destroyed. Although the polythylene and the inner metal sleeve were tightly swaged onto the source capsule, the source was still in good condition, as was verified by the source manufacturers's leak tests.

The potential for radiological exposure to transport workers and to members of the general public in the United States during routine transportation of radioactive material was assessed in NUREG–0170. On the basis of the total amount of californium-252 to be shipped, an estimated on shipment per year would be required to maintain the appropriate neutron fluence rate levels.

Conclusion

On the basis of foregoing assessment, the NRC staff concludes that the environmental effects of normal operation of the EDS–3C when located in any one of the four concourse areas of an airport are expected to be extremely small. The annual dose from EDS–3C operations to members of the public is comparable to that from the use of x-ray inspections systems that have been in use since the early 1970's (NCRP Report 95). For all scenarios, the maximum radiation exposures that may be received by workers in restricted areas (such as the operators) and those in unrestricted areas (other non-TNA workers, passengers, and members of the public) are calculated to be well below the limits specified in 10 CFR Part 20.

Alternatives to the Proposed Action

The principal alternatives to the proposed action are that of no action or the individual hand search of all checked baggage or cargo. In view of the foregoing conclusion that the proposed action will not result in any significant impact, the consideration of these alternatives rather than the proposed action is not justified.

Agencies and Persons Contacted

In performing this assessment, the NRC staff utilized the previous NRC environmental assessment dated August 15, 1989, FAA's amendment application dated August 22, 1989, and FAA's environmental report dated December 12, 1989. Agencies contacted were the California Department of Health Services, United Airlines, and the Washington Metroplitan Airports Authority.

Finding of No Significant Impact

The NRC has prepared an environmental assessment related to the amendment of Materials License No. 29–13141–05 entitled "Environmental Assessment of the Thermal Neutron Activation Explosive Detection System for Concourse Use at Airports." On the basis of this assessment, the NRC has concluded that the environmental impacts that would result from the proposed licensing action would not be significant and do not warrant the preparation of an environmental impact statement. Accordingly, it has been determined that a finding of no significant impact is appropriate.

For further technical details with respect to this action, see the NRC's previous environmental assessment for license application dated August 15, 1989, FAA's environmental report dated December 12, 1989, and other related correspondence. These documents (in Docket Number 030–30885) and the NRC's Final Environmental Assessment (to be published as NUREG–1396) may be examined or copied for a fee at NRC's Public Document Room at 2120 L Street, NW., Washington, DC 20555, or NRC's Region I Public Document Room, 475 Allendale Road, King of Prussia, PA 19406.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for a hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, on or before April 2, 1990. Be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the applicant (Department of Transportation, Federal Aviation Administration, Technical Center, ACT–360, building 210, Atlantic City, NJ 08405); and must comply with the requirements set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Material Licensing Proceedings." subpart L of 10 CFR Part 2, which became effective March 30, 1989, was published in the **Federal Register** on February 28, 1989.

Dated at Rockville, Maryland, this 23rd day of February 1990.

For the Nuclear Regulatory Commission.

John E. Glenn,

Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 90–4665 Filed 2–28–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–312]

Sacramento Municipal Utility District; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirements of 10 CFR 50.71(e)(4) to the Sacramento Municipal Utility District (SMUD, the licensee), for the Rancho Seco Nuclear Generating Station located in Sacramento County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 50.71(e)(4) to annually update the Rancho Seco Updated Safety Analysis Report (USAR). By letter dated September 25, 1989, SMUD requested an extension for submitting the next

revision to the USAR. The next revision, Amendment 7, would have been due no later than January 22, 1990. The SMUD request would extend the due date to no later than June 22, 1990. Subsequent revisions would be due on an annual schedule beginning on June 22, 1991.

The Need for the Proposed Action

The request for extension of the submittal date for the USAR revision is based on the permanent cessation of power operation at Rancho Seco on June 7, 1989 and the completion of defueling the reactor on December 8, 1989. Defueling is the last major action associated with an operating reactor, and in an effort to include all modifications at Rancho Seco relevant to an operating reactor the licensee requested an extension. Under the existing USAR revision schedule, a licensee submittal ws required no later than January 22, 1990. Plant modifications, in place six months prior to the due date, are required to be addressed in the submittal. As a result, a USAR update submittal on January 22, 1990, would have included a plant description and safety analysis which is current through June 22, 1989. The last six months of 1989 was a period where modifications associated with a normal operational plant continued, including extensive modifications to the fuel handling systems and a USAR update submittal on January 22, 1990 would not have included the final plant status as a normal operational plant.

Environmental Impact of the Proposed Action

The proposed exemption affects only the required date for submitting the USAR revision and does not affect the risk of facility accidents. Plant modifications completed during the period which would have been encompassed by the normal submittal schedule were evaluated independently by the utility and reviewed by the NRC staff. The post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents, or any signficant occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts asssociated with the proposed exemption. Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives either will have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require an earlier date for submittal of the USAR. Such an action would not enhance the protection of the environment and would result in unnecessary drain of licensee and Commission resources.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Rancho Seco Nuclear Generating Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated September 24, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Dated at Rockville, Maryland, this 22nd day of February 1990.

For the Nuclear Regulatory Commission.

Harry Rood,

Acting Director, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-4664 Filed 2-28-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8926]

Final Finding of No Significant Impact Regarding Termination of Source Material License SUA-1492, State of Wyoming, Bison Basin In-Situ Leach Project, Located in the Red Desert of Wyoming

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Final Finding of No Significant Impact.

1. Proposed Action.

The proposed administrative action is to terminate Source and Byproduct Material License SUA-1492. This action would authorize the release, for unrestricted use, of the Bison Basin site.

2. Reasons for Final Finding of No Significant Impact.

Restoration and decontamination inspections conducted by the NRC's Uranium Recovery Field Office indicate that licensing commitments have been fulfilled. Furthermore, gamma surveys and soil radium analysis verify that appropriate regulatory limits have been achieved. Similarly, all other monitored environs have radiological levels that are within previously observed background concentrations.

The following statements support the final finding of no significant impact, and summarize the conclusions resulting from restoration and decontamination inspections.

A. The ground-water monitoring program utilized at the site has supplied sufficient data to verify that either background concentrations or class of use standards exist for radionuclides, heavy metals, and other monitored constituents.

B. Decommissioning and decontamination inspections indicate that the site has been decontaminated to appropriate regulatory limits. Furthermore, all byproduct materials have been disposed of at a neighboring tailings disposal cell.

C. All decontamination and decommissioning requirements specified by Source Material License SUA-1492 have been fulfilled by the State of Wyoming and its contractors.

In accordance with 10 CFR 51.33(a), the Director of the Uranium Recovery Field Office, made the determination to issue a final finding of no significant impact. This finding, together with the enviromental documentation setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC. Concurrent with publication of this finding, the staff will terminate Source and Byproduct Material License SUA-1492 authorizing release of the area for unrestricted use.

Dated at Denver, Colorado, this 16th day of February, 1990.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 90-4663 Filed 2-28-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

Meeting of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2; GPU Nuclear Corp.

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI-2) will be meeting on March 14, 1990, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 S. Second Street, Harrisburg, Pennsylvania. The meeting will be open to the public.

At this meeting, the Panel will receive a presentation by the licensee, GPU Nuclear Corporation, on the completion of the TMI-2 defueling effort. The NRC staff will describe their plans for reviewing the licensee's Defueling Completion Report. Now that the licensee's current cleanup effort is nearly completed the Panel will discuss the advisability of terminating the Panel's activities. Due to conflicting schedules among Advisory Panel members and the delay in the licensee's submittal of the Defueling Completion Report this meeting is being scheduled with less than 15 days notice.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492-1373.

Dated February 23, 1990.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90-4690 Filed 2-28-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL-1 and 50-444-OL-1; Low Power Testing]

Public Service Co. of New Hamsphire, et al. Seabrook Station, Units 1 and 2; Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's orders of February 16 and 23, 1990, oral argument on the appeals of the joint intervenors from the Licensing Board's memorandum and order, LBP-89-28, 30 NRC 271 (1989), will be heard at 10 a.m., Tuesday, March 27, 1990, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

Dated: February 23, 1990.

For the Appeal Board.

Barbara A. Tompkins,

Secretary to the Appeal Board.

[FR Doc. 90-4689 Filed 2-28-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al. Denial of Amendment to Facility Operating License and Opportunity for Hearing

In the matter of Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California, The City of Anaheim, California.

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Southern California Edison Company, et al. (the licensee) for an amendment to Facility Operating License Nos. NPF-10 and NPF-15, issued to the licensee for operation of the San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, located in San Diego County, California. The Notice of Consideration of Issuance of this amendment was not published in the **Federal Register.**

The purpose of the licensee's amendment request was to revise the Technical Specifications to modify Note (2) of Table 4.3-1, "Reactor Protective Instrumentation Surveillance Requirements."

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated February 20, 1990.

By April 3, 1990, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of any petitions should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 2, 1989, and (2) the Commission's letter to the licensee dated February 20, 1990.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 20th day of February 1990.

For the Nuclear Regulatory Commission.

Harry Rood,

Acting Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-4666 Filed 2-28-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Service Policy Advisory Committee et al.; Meetings and Determination of Closing of Meetings

The meetings of the Services Policy Advisory Committee to be held March 1, 1990 from 2 p.m. to 5 p.m., in Washington, DC, and the ACTPN Task Force on Industrial Subsidies to be held March 9, 1990 from 9 a.m. to 12 p.m., in Washington, DC, and the Investment Policy Advisory Committee to be held March 15, 1990 from 9:30 a.m. to 12 p.m., in Washington, DC, and the Defense Policy Advisory Committee to be held March 26, 1990 from 9 a.m. to 12 p.m., in Washington, DC, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155 (f) (2) of title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosures of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Additional information can be obtained by contacting Mollie VAn Heuven, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC; 20506.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 90-4662 Filed 2-28-90; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27728; [File No. SR-GSCC-89-13]

Self-Regulatory Organization; Notice of Amendment to Proposed Rule Change by The Government Securities Clearing Corp.

February 22, 1990.

On February 5, 1990, the Government Securities Clearing Corporation, ("GSCC") filed with the Securities and Exchange Commission ("Commission") an amendment to a proposed rule change (SR-GSCC-89-13) filed on December 1, 1989.[1] On January 10, 1990, the Commission published notice of the original proposal in the **Federal Register.**[2] The proposed rule change would revise GSCC's clearing fund formula and establish a system to measure price volatility, set margin factors, create an offset class schedule and a disallowance percentage applicable to certain Government securities. The amendment to GSCC's proposed rule change would extend the application of the proposed rule filing to all Government securities as this term is defined in section 3(a)(42) (A), (B) and (C) of the Securites Exchange Act of 1934, as amended ("Act"),[3] except for mortgage-backed securities and zero-coupon instruments. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC is not amending its statement pursuant to this Item as originally filed.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes it reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 USC 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-GSCC-89-13 and should be submitted by March 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-4608 Filed 2-28-90; 8:45 am]

BILLING CODE 8010-01-M

[1] Letter from Jeffrey F. Ingber, Associate General Counsel, GSCC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, SEC (February 5, 1990).

[2] Securities Exchange Act Release No. 27580 (December 29, 1989), 55 FR 949 (January 10, 1990).

[3] 15 USC 78c(a)(42) (A), (B) and (C) (1989).

[Release No. 34-27727; File Nos. SR-MSE-86-9 and SR-PSE-87-12]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc. and Pacific Stock Exchange, Inc.; Order Permanently Approving Program Implementing Reduced Exposure Time for Orders Transmitted Under the Midwest Automated Execution ("MAX") System and the Pacific Securities Communication Order Routing and Execution ("SCOREX") System

I. Introduction.

The Midwest ("MSE") and Pacific ("PSE") Stock Exchanges, Inc. (collectively, "Exchanges") submitted to the Securities and Exchange Commission ("Commission" or "SEC") on November 12, 1986, and April 17, 1987, respectively, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] proposals to make permanent their existing pilot programs that reduce the exposure period for orders entered through their automated small order systems. Both rule changes propose to reduce from 30 seconds to 15 seconds the exposure time period for agency orders entered through their small order routing and execution systems.[3]

Notices of the proposals to make the programs permanent, as well as of the initial pilot phase programs, were provided by the issuance of Commission releases and publication in the **Federal Register**.[4] No comments were received by the Commission on any of the proposed rule changes.

II. Description of the Proposals.

The Midwest Automated Execution ("MAX") System and the PSE's Securities Order Routing and Execution ("SCOREX") System provide automated small order routing and execution mechanisms for retail orders for certain eligible securities. Small order routing and execution systems are designed to route smaller sized orders electronically from broker-dealers to the appropriate stock exchange floor for automatic execution or manual handling by the specialist.

SCOREX automatically routes market and limit orders of up to 1,099 shares from member firms to specialist posts, and guarantees execution of orders up to 1,099 shares at the best bid or offer displayed on the Intermarket Trading System ("ITS").[5] MAX provides similar

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The Commission approved a pilot program proposed by the Cincinnati Stock Exchange ("CSE"), which similarly reduces the order exposure time period from 30 seconds to 15 seconds for both public and professional agency orders entered through the CSE's order routing and execution system, called the National Securities Trading System ("NSTS"). *See* Exchange Act Release No. 25955 (August 1, 1988), 53 FR 29537 (August 5, 1988).

[4] *See* Securities Exchange Act Release Nos. 21329 (September 17, 1984), 49 FR 37199 (order approving PSE proposal on a pilot basis); 22357 (August 26, 1985), 50 FR 35890 (order approving MSE proposal on a pilot basis); 24047 (February 2, 1987), 52 FR 4548 (notice of filing of proposed rule change requesting permanent approval of MSE pilot); 24674 (July 2, 1987), 52 FR 26195 (notice of filing of proposed rule change requesting permanent approval of PSE pilot).

[5] ITS is a communication system designed to facilitate equity trading among competing markets by providing each market with order routing capabilities based on current quotation information. Specifically, ITS links participating markets and provides facilities and procedures for: (1) Display of composite quotation information at each of the participant markets so that brokers are able to determine readily the best bid and offer available from any participant for a multiply-traded security; (2) efficient routing of orders and administrative messages between market participants; and (3)

Continued

routing capabilities for market and limit orders of up to 2,099 shares and guaranteed execution capabilities for market and limit orders [6] of up to 2,099 [7] shares at the best bid or offer displayed on the ITS.

Immediately upon entry into MAX or SCOREX, an order is priced at the best ITS bid or offer. The order, together with its projected execution price, is then routed to the trading post of the specialist responsible for handling trading in the particular security. The order and execution price are then displayed on a video terminal at the specialist post for 15 seconds, thereby allowing the specialist an opportunity to improve upon the best ITS price. If the specialist does not intervene within this 15 second period, the order is executed automatically against the specialist at the previously determined execution price (*i.e.*, the best ITS price at the time the order was received by the system). Limit orders also can be routed through MAX and SCOREX and can receive an execution once the limit price is equalled or penetrated on either the MSE or PSE, or on the primary market (*i.e.* the New York or the American Stock Exchanges).[8]

At their respective inceptions, both the MAX and SCOREX systems provided for a 30 second exposure to the crowd prior to automatic execution. Subsequently, the Exchanges submitted proposed rule changes requesting that the exposure time be decreased from 30 to 15 seconds, and the Commission approved the rule changes on a pilot basis.[9] The Exchanges now are proposing to implement the 15 second exposures on a permanent basis. The Exchanges cite two reasons for the necessity of the reduced exposure time. First, the Exchanges claim that extended execution delays in a rapidly changing market could result in the delayed execution being printed on the tape at a price outside the current consolidated quote. Second, the Exchanges contend that the 15 second period offers a specialist or co-specialist ample opportunity to expose the order to the market.

In recognition of the concerns raised by any possible adverse effects resulting from decreased order exposure,[10] the MSE reported that it had discovered no variance in the percentage of MAX orders receiving an improved manual execution during the 30 second period versus the 15 second period or in the percentage of trades printed outside the quote during the 30 second exposure period versus the 15 second period.[11] Similarly, the PSE could not find any variance in execution quality in the 30 second versus 15 second period. Moreover, the PSE found that the "general consensus [of PSE specialists] was that the 15 second order exposure provides a more effective service to the customer since it will [be] more likely that the customer will receive the price he anticipates when he calls his [or her] order in, especially in a volatile market." [12] Finally, both Exchanges reported no customer complaints regarding executions occurring outside the quote.

III. Discussion and Conclusion.

The Commission has considered carefully the proposals and supporting data submitted by the Exchanges and finds, for the following reasons, that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations applicable to a national securities exchange.

The Commission continues to recognize the competing concerns of a customer's need to receive the best possible execution price and his or her need for timely execution. Moreover, the Commission believes that the increased competition that results from permitting regional specialists to attract orders from other markets by providing more efficient order executions generally enhances market-making competition. As a result, the Commission must balance any adverse effects resulting from decreased order exposure against the positive benefits obtained through the efficient executions of transactions and competition among brokers and dealers, exchange markets and markets other than exchanges. In this connection, the Commission believes it is rational for the Exchanges to reduce on a permanent basis their automatic execution order exposure periods from 30 to 15 seconds. The alternative of an increased order exposure of 30 seconds may result in imposing a costly (and illusory) requirement on market participants to attempt to achieve price improvement in a moving market.

The proposed rule changes should increase the efficiency with which MAX and SCOREX transactions are executed, without sacrificing the opportunity for specialists to improve the execution during the exposure period. As noted by the PSE, the Exchanges' proposals preserve the ability of specialists or cospecialists to improve manually the execution price of an order routed through MAX or SCOREX by, for example, stopping these orders and attempting to achieve a better execution. Furthermore, the experiences of the PSE and MSE with their respective order exposure pilots did not indicate any difference in executions with a 15 second exposure period versus the 30 second exposure period, and neither the Commission nor the Exchanges have received any adverse comments relating to the operation of the pilots. Thus, we conclude that MAX and SCOREX orders should receive more timely executions in a 15 second exposure period in comparison to a 30 second order exposure, while preserving the quality of executions and the opportunity for improved executions on the Exchanges.

For the above reasons, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, with the requirements of sections 6(b)(5) and 11A(a) of the Act,[13] in that they are designed to promote just and equitable principles of trade, perfect the mechanisms of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly auction markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communication systems, facilitate the practicability of brokers executing investors' orders in the best

participation, under certain conditions, by members of all participating markets in opening transactions in those markets.μ

[6] Agency limit orders can receive an execution through MAX once the limit price is equalled or penetrated on the primary market.

[7] Nevertheless, the number of shares eligible for mandatory automatic execution over MAX is 1,099 shares

[8] *But see supra* note 6.

[9] *See supra* note 4.

[10] The Commission recognizes the economic tradeoffs associated with increased order exposure in the securities markets. On the one hand, increased order exposure may provide economic benefits to the securities markets by encouraging enhanced interaction of orders, increased opportunities for best execution of customer orders, and greater intermarket competition for order flow (and, ultimately, increased market efficiencies). On the other hand, increased order exposure may impose certain economic costs (ultimately borne by the investing public) by requiring Exchange members and member firms to provide price protections for customer orders and expose such orders to competing market centers for up to 30 seconds before execution. *See, e.g.*, Securities Exchange Act Release No. 20074 (August 15, 1983), 28 SEC Docket 938, 940 (August 30, 1983) (deferral of proposed Commission order exposure rule).

[11] *See* letter from Patrick Conroy, Associate Counsel, MSE, to George Scargle, Attorney, Branch of Exchange Regulation, Division of Market Regulation, dated October 17, 1988.

[12] *See* letter from Kenneth J. Marcus, Senior Staff Attorney, Equity Compliance, PSE to George Scargle, Attorney, Division of Market Regulation, dated May 17, 1989.

[13] 15 U.S.C. 78f(b)(5) and 78k-1(a) (1982).

market, and, finally, contribute to the best execution of such orders.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the above mentioned proposed rule changes (SR–MSE–86–9 and SR–PSE–87–12) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Dated: February 22, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–4612 Filed 02–28–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–27717; File No. SR–OCC–90–01]

Self-Regulatory Organizations; Proposed Rule Change by the Options Clearing Corporation Relating to Cross-Margining

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 30, 1990, The Option Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Item I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to amend its By-Laws and Rules to expand the OCC/Chicago Mercantile Exchange ("CME") cross-margining program to certain non-proprietary accounts carried by participating clearing members of OCC and CME on behalf of "Market Professionals." The program is to be expanded by means of an Amended and Restated Cross-Margining Agreement ("Amended Agreement") between OCC and CME, and the changes proposed in OCC's By-Laws and Rules are intended to implement the Amended Agreement.

The Amended and Restate Cross-Margining Agreement

The Amended Agreement includes the same general provisions as the existing cross-margining agreement, modified as necessary to accommodate non-proprietary cross-margining. Section 1 of the Amended Agreement includes certain additional definitions applicable to non-proprietary cross-margining.

Section 2 of the Amended Agreement provides that, subject to the approval of both clearing organizations, joint clearing members and pairs of affiliated clearing members electing cross-margining may establish one pair of Proprietary Cross-Margining ("X–M") Accounts and one pair of Non-Proprietary X–M Accounts. The forms of a joint clearing member's Proprietary X–M Account agreement and an affiliated clearing member's Proprietary X–M Account agreement are set out respectively as Exhibits B and C to the Amended Agreement, and the corresponding forms of a joint clearing member or pair of affiliated clearing member's Non-Proprietary X–M Account agreement are set out respectively as Exhibits D and E to the Amended Agreement. Section 2 and the Account agreements provide that OCC and CME will have a lien on and a security interest in all positions in an X–M Account, all margin held in respect thereof, and all proceeds of any of the foregoing, as security for obligations of the joint clearing member or pair of affiliated clearing members to either clearing organization, provided that the security interest in positions in the Non-Proprietary X–M Account can only be used as security for obligations arising from the Non-Proprietary X–M Account. As in the previous agreement, section 2 also provides for the designation of either OCC or CME as the "Designated Clearing Organization" for a joint clearing member or pair of affiliated clearing members.

Section 3 of the Amended Agreement contemplates that clearing members will be able to designate either the paired Proprietary X–M Accounts or the paired Non-Proprietary X–M Accounts, or both, as X–M Pledge Accounts. However, the terms of the pledge arrangements have not yet been established. Accordingly, section 3 states that these terms will be provided in a Supplement to the Amended Agreement and that no X–M Pledge Accounts shall be established until all necessary regulatory approval is obtained.

Section 5 of the Amended Agreement consolidates existing agreements between OCC and CME relating to margin calculation and "Super Margin" and makes those agreements applicable to Non-Proprietary X–M Accounts as well as Proprietary X–M Accounts.

Section 6 of the Amended Agreement describes the acceptable forms of initial margin. Changes from the previous version of the agreement include clarification concerning the terms of acceptable letters of credit and provisions concerning the custody of customer funds in segregated accounts.

Section 7 of the Amended Agreement describes the daily settlement procedures in respect of X–M Accounts. Changes from the previous version of the agreement simply apply the same procedures to settlement in respect of Non-Proprietary X–M Accounts while maintaining segregation of customer funds.

Section 8 of the Amended Agreement describes close-out of X–M Accounts. Funds received in liquidating contracts in the Proprietary X–M Account at each clearing organization may be applied to offset funds expended in liquidating contracts in such account and in the Non-Proprietary X–M Account at such clearing organization.

Section 8 of the Amended Agreement provides further that any net proceeds remaining after setting off funds expended in liquidating contracts will be deposited in Proprietary or Non-Proprietary liquidating accounts, as the case may be. Margin for the Non-Proprietary X–M Accounts will be deposited in the Non-Proprietary Liquidating Account and margin for the Proprietary X–M Account will be deposited in the Proprietary Liquidating Account. Funds in the Proprietary Liquidating Account may be applied against liquidating deficits in either the Proprietary or Non-Proprietary X–M Accounts, while funds in the Non-Proprietary Liquidating Account may be applied only against liquidating deficits in the Non-Proprietary X–M Accounts. Any surplus in the Proprietary Liquidating Account will be divided equally between OCC and CME to the extent that either clearing organization has losses in other accounts carried by the failed clearing member.

Section 9, 10, 11 and 12 of the Amended Agreement are unchanged from the previously filed agreement except for minor corrections and conforming changes.

Section 13 of the Amended Agreement provides that neither OCC nor CME will use its authority to reject a transaction effected in an X–M account that was reported to the clearing organization as a result of matched trades. This agreement is consistent with OCC's existing policy against rejecting matched trades.

Section 14 simply incorporates existing agreements between OCC and CME relating to the sharing of certain information concerning their respective clearing members. A new section 16 has been added to provide for arbitration of disputes between OCC and CME that might arise from the Amended Agreement. OCC and CME have determined that arbitration of any such

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[14] 15 U.S.C. 78s(b)(2) (1982).

[15] *See* 17 CFR 200.30–3(a)(12) (1989).

dispute will likely be in their mutual best interests.

OCC's Rules

The changes proposed in OCC's By-Laws and Rules implement these provisions of the Amended Agreement. References to Proprietary and Non-Proprietary X–M Accounts are added to article I, section 1 and article VI, section 24 of the By-Laws.

Changes to various provisions in Chapter VII of the Rules add references to Proprietary and Non-Proprietary X-M Account agreements and set forth the appropriate bank accounts that must be established for each type of account (including segregated accounts for non-proprietary cross-margining).

Amended Rule 1106 provides that, in liquidating X-M Accounts, any surplus in the regular (non-cross-margining) Liquidating Settlement Account may be used to offset deficits in the X-M Liquidating Accounts.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

The cross-margining program between OCC and the CME, as it presently exists, is limited to the cross-margining of proprietary accounts maintained by participating clearing members. The purpose of this rule filing is to expand the OCC/CME cross-margining program to certain non-proprietary accounts carried by participating clearing members of OCC and CME on behalf of "Market Professionals." A "Market Professional" is defined as a market-maker, specialist, or registered trader on a securities options market, or a member of CME, who actively trades for his own account both CME-cleared and OCC-cleared contracts that are eligible for cross-margining.

Non-proprietary cross-margining will function in essentially the same way as proprietary cross-margining except for certain differences relating to the segregation of customer funds. As in the existing cross-margining program, participation is available to an OCC clearing member that is also a clearing member of CME, *i.e.*, a joint clearing member, or that has an affiliate that is a member of CME, *i.e.*, an affiliated clearing member.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934, as amended, because it extends the implementation of cross-margining to market professionals, enhancing the safety of the clearing system while providing lower clearing margin costs to participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not, and are not intended to be, solicited by OCC with respect to the proposed rule change and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR–OCC–90–01 and should be submitted by March 22, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 21, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–4609 Filed 2–28–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17349; File No. 812–7453]

Monarch Life Insurance Co. et al.

February 21, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Monarch Life Insurance Company ("Monarch Life"), Monarch Life Insurance Company Separate Account VA ("Fund VA"), and Monarch Financial Services, Inc. ("MFS").

RELEVANT 1940 ACT OF SECTION: Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of Fund VA.

FILING DATE: The Application was filed on December 23, 1989 and amended on February 14, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m. on March 19, 1990. Request a hearing in writing giving the nature of your interest, the reasons for the request, and the issues contested. Serve

Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Raymond A. Terfera, Esq., One Monarch Place, Springfield, MA 01133.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272–2026, or Heidi Stam, Special Counsel, at (202) 272–2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

APPLICANTS' REPRESENTATIONS:

1. Monarch Life, a wholly owned subsidiary of Monarch Capital Corporation, is a stock life insurance company organized in 1941 under the laws of the Commonwealth of Massachusetts. Monarch Life established Fund VA on October 20, 1987. Fund VA funds flexible purchase payment deferred annuity contracts and single purchase payment immediate annuity contracts (collectively, the "Contracts").

2. MFS, a wholly owned subsidiary of Monarch Capital Corporation, is a broker-dealer registered under the Securities Exchange Act of 1934. MFS will be the principal underwriter of the Contracts.

3. The Contracts will be issued in connection with various types of retirement plans or individual retirement arrangements, including those qualifying for tax treatment pursuant to the provisions of sections 401, 403, 408 or 457 of the Internal Revenue Code of 1986, as amended (the "Code"), and those which do not so qualify.

4. Fund VA will be divided into thirteen subaccounts, each of which will invest in a separate investment portfolio of Variable Investors Series Trust ("VIST"). VIST is a no-load, open-end, diversified, series management investment company registered under the 1940 Act.

5. The initial purchase payment for any Contract providing for the payment of a deferred benefit will be at least $1,000. The minimum purchase payment of a Contract providing for the payment of an immediate benefit will be $10,000. For qualified Contracts issued pursuant to Section 408 of the Code, the initial purchase payment will not be less than the additional deductible amount allowed by law for non-working spouses, currently $250. Subsequent purchase payments in either case must be at least $100.

6. Fund VA will assess each Contract an annual contract maintenance charge ("Annual Contract Maintenance Charge") of $30 during each contract year during the accumulation period. The Annual Contract Maintenance Charge is for administrative services, which do not include expenses of distributing the Contracts. Monarch Life estimates that this charge will represent a portion of the actual cost of providing administrative services. In the case of a total withdrawal occurring 31 or more days after the beginning of a contract year, the full charge of $30 will be deducted.

7. Monarch Life will also charge an administrative charge (the "Administrative Charge"), which is assessed daily against Fund VA at an annual rate of 0.15%. The Administrative Charge is to reimburse Monarch Life for costs incurred in administering Fund VA and its Contracts. Monarch Life estimates that this charge will represent a portion of the actual cost of providing administrative services, and will not include expenses of distributing the Contracts.

8. Both the Annual Contract Maintenance Charge and the Administrative Charge are guaranteed and may not be increased by Monarch Life. The Applicants will rely on Rule 26a–1 under the Act for the necessary exemptive relief to charge both the Annual Contract Maintenance Charge and the Administrative Charge.

9. No deduction for distribution or sales expense charges will be imposed upon purchase payments when received by Monarch Life. Rather, Monarch Life seeks to recoup some or all of such distribution expenses from a withdrawal charge ("Withdrawal Charge"). The Contracts will allow each owner to withdraw his or her interest in a Contract in whole or in part prior to the date annuity payments commence. The withdrawal value of a Contract will be determined as of the valuation date next following the date that the signed written request to surrender is received by Monarch Life. In the event that a withdrawal exceeds the withdrawal privilege amount, a Withdrawal Charge will be imposed in accordance with the following schedule:

Contract anniversary since purchase payment made	Applicable withdrawal charge percentage
0	5
1	4
2	3
3	2
4	1
5+	0

The withdrawal privilege amount is equal to the sum of 10% of new purchase payments plus 100% of the excess of the value of a Contract over new purchase payments not previously withdrawn. New purchase payments are purchase payments made in the current and four previous Contracts years. Applicants will rely on Rule 6c–8 under the Act for the necessary exemptive relief to permit imposition of the Withdrawal Charge.

10. In addition to the Administrative Charge and the Annual Contract Maintenance Charge, a risk charge ("Risk Charge") will be assessed daily against the assets of Fund VA at an annual rate of 1.25% (approximately 0.85% for mortality expense risks and approximately 0.40% for expense risks). The Risk Charge is guaranteed and may not be increased by Monarch Life. Applicants state that the mortality component of the Risk Charge is intended to compensate Monarch Life for assuming the risk that their actuarial estimate of mortality rates may prove erroneous; the risk that a beneficiary may receive annuity benefits for a period longer than those reflected in the Contract's guaranteed annuity rates or may die at a time when the death benefit guaranteed by the Contract is higher than the accumulation value of the participant's Contract. The expense component of the Risk Charge is intended to compensate Monarch Life for assuming the risk that administrative charges, which are guaranteed not to increase, may prove insufficient to cover expenses actually incurred.

11. Applicants represent that the level of Risk Charge is reasonable in relation to the risks assumed by Applicants under the Contracts and within the range of industry practice for comparable annuity contracts. This representation is based upon Monarch Life's analysis of publicly available information about such contracts, taking into consideration the particular annuity features of comparable contracts, including such factors as current charge levels, charge level guarantees or annuity rate guarantees, the manner in which the charges are imposed, and the markets in which the contracts are offered. Applicants state that Monarch Life has incorporated the identity of the

products analyzed and its analysis, including its methodology and results, into a memorandum which it will maintain and make available to the Commission or its staff upon request.

12. Applicants represent that the Withdrawal Charge assessed in connection with certain partial or total withdrawals may be insufficient to cover all costs of distributing the Contracts. Applicants state that if the actual amounts derived from the Withdrawal Charge prove insufficient to cover the actual costs of distributing the Contracts, the deficiency will be met from Monarch Life's general corporate funds, including amounts, if any, derived from the Risk Charge not otherwise applied to the expense the Risk Charge was designed to defray. Applicants represent that Monarch Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit Fund VA and the owners of the Contracts, and state that the basis for this conclusion has been incorporated in a memorandum which Monarch Life will maintain and make available to the Commission or its staff upon request.

13. Applicants represent that the assets of Fund VA will be invested only in management investment companies which undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by its board of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of section 2(a)(19) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–4611 Filed 2–28–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 35–25045]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

February 22, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 19, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if order, and will receive a copy of any notice or ordered issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Louisiana Power & Light Company (70–7553)

Louisiana Power & Light Company ("LP&L"), 317 Baronne Street, New Orleans, Louisiana 70112, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

By order dated December 15, 1988 (HCAR No. 24774), the Commission authorized LP&L to issue and sell up to $75 million aggregate principal amount of its first mortgage bonds ("Bonds"), in one or more series, from time-to-time, through December 31, 1989. Jurisdiction was reserved over the proposed issuance and sale through December 31, 1989 of up to: (1) $275 million aggregate principal amount of Bonds ("Additional Bonds"); and (2) $100 million aggregate per value of its preferred stock, either $25 par value or $100 par value ("Preferred Stock").

LP&L now requests authority through December 31, 1990 to: (1) Issue and sell, from time-to-time, the Additional Bonds, with maturities of 5 to 30 years; (2) issue and sell, from time-to-time, the Preferred Stock; and (3) negotiate the terms and conditions of the Additional Bonds and Preferred Stock under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. It may do so.

Alternatively, LP&L proposes to sell the Additional Bonds and Preferred Stock under the alternative competitive bidding procedures authorized by the Statement of Policy dated September 2, 1982 (HCAR No. 22623). LP&L may determine to provide an insurance policy for the payment of the principal of and/or interest on one or more series of the Additional Bonds.

Mississippi Power & Light Company (70–7737)

Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39215–1640, an electric public-utility subsidiary of Entergy Corporation, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder.

MP&L proposes to issue and sell, at one time or from time-to-time, through December 31, 1991, one or more new series of its general and refunding mortgage bonds ("G&R Bonds") in an aggregate principal amount not to exceed $105 million.

The net proceeds of the issuance and sale of the G&R Bonds will be used for general corporate purposes, including, but not limited to MP&L's ongoing construction program and the acquisition, at any time, or from time-to-time, through December 31, 1991, by means of tender offer or otherwise, prior to their respective maturities, of: (1) Up to an aggregate principal amount of $105 million of its outstanding first mortgage bonds; and (2) up to $100 million of one or more series of its outstanding preferred stock, $100 par value.

MP&L requests authorization to begin negotiations, pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5), in connection with the issuance and sale of the G&R Bonds. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–4610 Filed 2–28–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–90–10]

Petitions for Exemption; Summary of Receipt and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the

application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 21, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 23, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25337.
Petitioner: Era Aviation, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow petitioner's pilots to remove and replace seats when away from the maintenance base.

Docket No.: 26039.
Petitioner: Delta Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 121.481.
Description of Relief Sought: To allow petitioner to conduct aircraft operations between the contiguous 48 states and the State of Alaska, Canada, Mexico, and the Bahamas under the flight time limitations and rest requirements of § 121.471.

Docket No.: 26117.
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.621(a)(1) (i), (ii), and (iii).
Description of Relief Sought: To allow petitioner to conduct flag operations, including redispatch operations, to destinations within Australian airspace scheduled 6 hours or less under the requirements of the Australian Aeronautical Information Publication.

Docket No.: 26120.
Petitioner: U.S. Fish and Wildlife Service.
Sections of the FAR Affected: 14 CFR 45.29.
Description of Relief Sought: To allow petitioner to utilize a 3-inch-high N-number in lieu of the standard 12-inch-high N-numbers on its new Maule M–6 aircraft.

Docket No.: 20049.
Petitioner: T.B.M. Inc.
Sections of the FAR Affected: 14 CFR 91.211(a)(1).
Description of Relief Sought/ Disposition: To extend Exemption No. 2956, as amended, that allows petitioner to operate its Douglas DC–6 and DC–7 aircraft without a flight engineer during flightcrew training, ferry, and test flights conducted in preparation for firefighting operations under part 137 of the FAR. Exemption No. 2956, as amended, will expire on April 30, 1990.
Grant, February 15, 1990, Exemption No. 2956F

Docket No.: 24041.
Petitioner: Butler Aircraft Co.
Regulations Affected: 14 CFR 91.211(a)(1).
Description of Relief Sought/ Disposition: To extend Exemption No. 2989, as amended, that allows petitioner to operate its Douglas DC–6 and DC–7 aircraft without a flight engineer during flightcrew training, ferry, and test flights conducted in preparation for firefighting operations under part 137 of the FAR. Exemption No. 2989, as amended, will expire on April 30, 1990.
Grant, February 15, 1990, Exemption No. 2989E

Docket No.: 24770.
Petitioner: Flight Safety International.
Sections of the FAR Affected: 14 CFR 61.57(a)(1) and 61.58(c).
Description of Relief Sought/ Disposition: To extend Exemption No. 4609B that allows pilots contracting with petitioner to substitute an FAA-approved helicopter training program using petitioner's training facilities for the requirements of §§ 61.57(a)(1) and 61.58(c) for the Sikorsky S–76 aircraft and § 61.57(a)(1) for the Bell 222 aircraft. Exemption No. 4609B will expire on January 31, 1990.
Grant, January 25, 1990, Exemption No. 4609C

Docket No.: 25483.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 91.27(c), 91.173(d), and part 43, Appendix B, paragraph (d).
Description of Relief Sought/ Disposition: To extend Exemption No. 4902 that allows all aircraft operated under parts 121 and 127 and all aircraft operated in commuter air carrier operations (as defined in part 135 and SFAR 38–4), under an FAA-approved continuous airworthiness maintenance progarm, to be operated without complying with the requirements pertaining to the location of aircraft identification plates and carriage of FAA Form 337, as evidence of installation approval for fuel tank installations in the passenger or baggage compartment.
Grant, February 13, 1990, Exemption No. 4902A

Docket No.: 25796.
Petitioner: Evergreen Helicopters, Inc.
Regulations Affected: 14 CFR 135.379 and 135.385.
Description of Relief Sought/ Disposition: To allow petitioner to operate five Casa 212 aircraft under certain specified operating conditions.
Denial, February 8, 1990, Exemption No. 5150

Docket No.: 25979.
Petitioner: Bellair, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To allow petitioner's pilots to remvoe and install passenger seats in its single-engine aircraft for the purpose of conducting flight operations involving freight hauling and medical evacuations.
Grant, February 12, 1990, Exemption No. 5155

Docket No.: 26062.
Petitioner: Northwest Airlines, Inc.
Sections of the FAR Affected: 14 CFR 108.23(b).
Description of Relief Sought/ Dispositon: To allow a retraining interval exceeding the 12 months specified so that this training could be scheduled concurrently with the Crewmember Emergency Training required by § 121.417.
Grant, February 7, 1990, Exemption No. 5148

Docket No.: 26109.
Petitioner: Pan Am Express.
Sections of the FAR Affected: 14 CFR 135.337(a) (2), (3), and (4) and 135.339(c)(1).

Description of Relief Sought/ Disposition: To allow petitioner to use certain instructor pilots of British Aerospace Corporation to train petitioner's initial cadre of pilots in the British Aerospace Jetstream Super 31 (BA–3201) type airplane without holding U.S. certificates and ratings and without meeting all of the applicable training requirements of subpart H or part 135.

Grant, Febraury 8, 1990, Exemption No. 5151

Docket No.: 073CE.

Petitioner: Dornier Seastar Gmbh and Company.

Sections of the FAR Affected: 14 CFR 23.807(d)(1).

Description of Relief Sought Disposition: To allow the passenger entrance door of the Dornier Seastar to function as a non-floor-level emergency exit.

Grant, February 6, 1990, Exemption Nos. 5115 and 5116

Docket No.: 074CE.

Petitioner: Dornier Seastar Gmbh and Company.

Sections of the FAR Affected: 14 CFR 23.807(d)(1)(i).

Description of Relief Sought/ Disposition: To allow petitioner an exemption from the requirement to have an emergency exit on the same side of the cabin as the passenger entrance door.

Grant, February 6, 1990, Exemption Nos. 5115 and 5116

Docket No.: 016NM.

Petitioner: Trans World Airlines, Inc.

Sections of the FAR Affected: 14 CFR 25.1303(c)(1).

Description of Relief Sought/ Disposition: To extend Exemption No. 4937 that allows operation of certain L–1011 aircraft with an interchange agreement with Gulf Air Company of Bahrain, Arabian Gulf, without having the operating limitations listed on the airworthiness certificates issued by the Government of the Emirate of Abu Dhabi.

Grant, February 2, 1990, Exemption No. 4937A

Docket No.: 019NM.

Petitioner: Aerospatiale.

Regulations Affected: 14 CFR 25.785(h).

Description of Relief Sought/ Dispositon: To permit certification of the ATR–72 combi configurations with more than 50 passengers without requiring a significant change in the installation of the second flight attendant seat.

Grant, January 25, 1990, Exemption No. 5145

[FR Doc. 90–4628 Filed 2–28–90; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA); Executive Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the Executive Committee meeting to be held March 21, 1990, at the Federal Aviation Administration Technical Center, Atlantic City Airport, New Jersey, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's Remarks and Introductions; (2) Approval of January 26, 1990, Executive Committee Meeting Minutes; (3) Executive Director's Report; (4) Special Committee Activities Report for January–February 1990; (5) Report of the Fiscal and Management Subcommittee; (6) Report of the RTCA Awards Committee; (7) Consideration for Approval of Special Committee Reports on Special Committee 162: *Aviation Systems Design Guidelines for Open Systems Interconnection (OSI)* and Special Committee 161: *Radio Determination Satellite Service (RDSS);* (8) Other Business; and (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on Fedruary 21, 1990.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90–4629 Filed 2–28–90; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering, and Development Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the System Capacity Subcommittee of the Federal Aviation Administration Research, Engineering, and Development Advisory Committee to be held Thursday and Friday, March 22–23, 1990. The meeting will take place at 9 a.m. in the MacCracken Room, 10th Floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting follows:

- Airport Development and Government Roles Working Group Report
- Noise Working Group Report
- Finance Working Group Report
- System Capacity and Technology Working Group Report
- Review of Recommendations

Attendance is open to the interested public but limited to space available. With the approval of the Subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact Mr. James R. Smith, Direcator, System Capacity Office, ASC–1, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8789.

Any member of the public may present a written statement to the Subcommittee at any time.

Issued in Washington, DC, on February 16, 1990.

John E. Turner,

Executive Director, Research, Engineering, and Development Advisory Committee.

[FR Doc. 90–4630 Filed 2–28–90; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Hunterdon County, NJ

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Hunterdon County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Lloyd J. Jacobs, Staff Specialist for the Environment, Federal Highway Administration, 25 Scotch Road, Trenton, New Jersey 08628, Telephone: (609) 989–2291.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Jersey Department of Transportation (NJDOT) intends to prepare an Environmental Impact Statement on a proposed action to construct a Bypass of Route 31 in Hunterdon County, New Jersey, Federal Project Number F–37(111). The proposed project will consist of constructing a bypass of existing Route 31 and a portion of Route 202 in Flemington Borough and Raritan Township, Hunterdon County, New Jersey. This bypass would include

highway construction on new location for a distance of approximately 5 miles.

The purpose of this proposed project is to bypass those portions of Route 31 and Route 202 which experience severe traffic congestion in the Flemington area due to continued increased commercial and residential development.

Alternatives presently under consideration include (1) taking no action; (2) the Partial Bypass; and (3) the Full Bypass. Both build alternatives begin at a proposed intersection with Route 31 north of Bartles Corner Road and extend in a southerly direction to Route 202 at a location north and east of the existing Flemington Circle. This is the southern terminus of the Partial Bypass. The Full Bypass continues from this location in a southerly and westerly direction to a terminus near the existing intersection of Route 31/202 and County Route 611 (South Main Street).

The FHWA and NJDOT will consult with other government agencies on their areas of responsibility. NJDOT is presently contacting federal, state, and local agencies with a description of the proposed project and inviting those interested agencies having questions of comments to attend a project scoping meeting.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program)

Issued on: February 23, 1990.

Lloyd J. Jacobs,

Staff Specialist for the Environment, Trenton, New Jersey.

[FR Doc. 90-4657 Filed 2-28-90; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. IP89-08; Notice 2]

Denial of Petiton for Determination of Inconsequential Noncompliance; Marmon Motor Co.

This notice denies the petition by Marmon Motor Company (Marmon) of Garland, Texas, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.121, Federal Motor Vehicle Safety Standard No. 121, "Air Brake Systems." The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on October 10, 1989, and an opportunity afforded for comment (54 FR 41561).

Section S5.1.5 of Standard No. 121 requires that a warning signal be given to the driver when the pressure in the service reservoir system is below 60 psi. Marmon produced approximately 280 Class 8 trucks and truck/tractors from July 11, 1988, through July 24, 1989, which may not activate the warning signal on descending pressure until 55 psi. Marmon supported its petition with the following arguments:.

(1) The trucks are equipped with two (2) air reservoir pressure gauges, a visible low air warning light, and an audible low air alarm.

(2) The warning system does function properly-only the setpoint is incorrect.

(3) The (incorrect) pressure switch used has a trip point of a minimum of 55 psi. Because of manufacturing tolerances on this switch, activation is typically at 55 to 61 psi. Those that activate at 60 psi or higher are in compliance.

(4) The warning system is "dual" in that there are two check-separated reservoirs, each with a pressure switch to activate the warning system. The alarm activates at the point when either system drops to a pressure sufficient to trip its pressure switch,

(5) Adequate air pressure for braking is still present when the alarm does go off. Adequate pressure to release the parking/emergency brakes is also available. The required accuracy of the system gauges is 7 percent of the compressor cut-in pressure (85 psi) or approximately 6 psi. The pressure switches are within this tolerance of the approximately 6 psi. The pressure switches are within this tolerance of the requirement.

One comment was received on the petition. In the opinion of Henry Gluckstern of Maplewood, N.J., the gauge accuracy could result in some warnings not being delivered until the pressure dropped to 49 psi (the 55 psi setpoint minus the 6 psi accuracy of the gauge). For this reason, he recommended denial of the petition.

The agency has reviewed the arguments of the petitioner, and has not been persuaded by them. The purpose of the warning signal requirement is to notify the vehicle operator that there is a loss of air pressure which could lead to brake failure. The setpoint of 60 psi was set to ensure that the operator would have enough pressure to apply the brakes effectively when a loss of air pressure occurs. It follows that there is less of a safety benefit (a greater likelihood of insufficient pressure, and a greater likelihood of increased stopping distance) if a vehicle operator is not warned until the pressure is 55 psi (or lower, depending on the accuracy of the gauge) and applies the brakes at that point. NHTSA has rarely deemed a failure to meet a performance standard as having an inconsequential relationship to safety, and does not do so here. Accordingly, for the reasons discussed above, the petitioner has failed to meet its burden of persuasion that the noncompliance herein described in inconsequential as it relates to motor vehicle safety, and its petition is denied.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Dated: February 26, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-4700 Filed 2-28-90; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 90-02-IP-NO1]

Mazda Motor Corporation of Japan Receipt of Petition For Determination Of Inconsequential Noncompliance

Mazda Motor Corporation of Japan, through Mazda Research & Development of North America, of Ann Arbor, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars," on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.2(a) of FMVSS No. 120 requires a designation which indicates the source of the rim's published nominal dimensions as follows:

(1) "T" indicates The Tire and Rim Association.

(2) "E" indicates The European Tyre and Rim Technical Organisation.

(3) "J" indicates Japan Automobile Tire Manufacturers Association.

(4) "D" indicates Deutsche Industire Norm.

(5) "M" indicates The Society Of Motor Manufacturers & Traders, Ltd.

(6) "B" indicates British Standards Institution.

(7) "S" indicates Scandinavian Tire and Rim Organization.

(8) "N" indicates an independent listing pursuant to S4.4.1(a) of Standard No. 109 or S5.1(a) of Standard No. 119.

Paragraph S5.2(c) requires the symbol DOT, constituting a certification by the manufacturer of the rim that the rim complies with all applicable motor vehicle safety standards.

During the period of September 5, 1989 to November 11, 1989, Mazda fitted 3,352 units of the 1990 Model Year B2200 and B2600i pick-up truck vehicles with wheel rims that do not comply with paragraphs S5.2 (a) and (c). These vehicles lacked the required designation which indicates the source of the rim's published nominal dimensions and the "DOT" symbol.

To support its petition for inconsequential noncompliance Mazda provided the following arguments:

The non-compliance does not affect vehicle performance as the rim and tires are properly matched.

The correct tire sizes which match the wheel rim are stated on the tire placard that is affixed to the vehicle pursuant to 49 CFR 571.120, section 5.3.

Pursuant to 49 CFR 571.120 section 5.2(d), the rim's manufacturer or Mazda may be contacted for tire and rim replacement information.

Interested persons are invited to submit written data, views and arguments on the petition of Mazda, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 2, 1990.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on February 26, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-4704 Filed 2-28-90; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 90-01-EX-NO2]

Officine Alfieri Maserati S.p.A.; Grant of Petition for Temporary Exemption From Standard No. 208

This notice grants the petition by Officine Alfieri Maserati S.p.A. of Modena, Italy, through Maserati Automobiles Incorporated of Baltimore, MD, for a temporary exemption from the passive restraint requirements of Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems.* The exemption covers covertible models, and expires June 1, 1991. The basis of the petition was that compliance would cause the petitioner substantial economic hardship, and that it had, in good faith, attempted to comply with Standard No. 208.

Notice of receipt of the petition was published on December 15, 1989, and an opportunity afforded for comment (54 FR 51546).

To summarize Maserati's petition, that company's long-term goal is to develop an air bag system for use in all models. Following NHTSA's denial of its previous petition in August 1988 (53 FR 34629) for an exemption from Standard No. 208 until September 1, 1989, Maserati developed an automatic belt system for its closed vehicles. This system could not be installed in convertibles. The effort expended in its development delayed Maserati's efforts to bring the convertibles into compliance through the installation of an air bag system. However, Masertai believes that it will be able to install an air bag system in its convertibles by June 1991. In the meantime, however, it will be unable to sell convertibles in the U.S. market absent an exemption. The convertible presently accounts for 40 to 50 percent of the company's sales in the United States, and, according to Maserati's estimates, may account for 60 to 70 percent of its U.S. volume as demand for its closed cars lessens. Maserati further estimated that a total of approximately 350 covertibles would be covered by an exemption if granted for the period of time requested.

In addition to the potential loss of sales, and in further support of its hardship argument, Maserati called NHTSA's attention to its declining production over the past few years, from a high of approximately 5000 cars in 1985, to a low of about 3000 in 1988. The U.S. sales portion of that figure declined from 2000 to 650 units, respectively. The petitioner's cumulative losses for 1987 and 1988 exceed $44,000,000, and those of its U.S. sales representative, $11,600,000.

Notwithstanding these losses, in those years Maserati expended $10,600,000 "on research and development in good faith effort to build a product in compliance with required standards." Between $500,000 and $600,000 of this was expended in the past year on passive belt development. Future costs to be incurred in air bag development are expected to total an additional $1,100,000.

The company also argued that an exemption would be consistent with the public interest and the objectives of the Vehicle Safety Act. A denial would mean a cessation of importation depriving the U.S. market "of the products of one of the last small independent automobile manufacturers," one which has a 70-year history. In its opinion, the number of vehicles to be exempted will not have a material effect upon motor vehicle safety, as they will be equipped with 3-point manual restraint systems. This system complied with Standard No. 208 before the passive restraint requirement became effective Most important, granting the petition will allow Maserati to offer air bags sooner and in more vehicles than if the petition is denied. The economic benefits of continued sales will allow greater research and development. Once the air bag is installed in convertibles, its installation in closed cars will follow shortly thereafter. With an exemption, Maserati expressed its hope to provide a passenger side air bag by December 1991, "some 2 years before they are required."

No comments were received on the petition.

The primary determinant that the agency has used in determining substantial economic hardship is a comparison of the cost of achieving compliance with the net income or loss of the petitioner in the 3 years preceding the filing of its petition. In those instances where the balance sheets show a net loss, NHTSA has tended to consider that a *prima facie* case of hardship has been shown. Maserati's balance sheets indicate that its losses are of a continuing nature, and that the passage of time has done little to ameliorate its situation. At the end of 1988, the cumulative losses for that year and 1987 were $44,000,000. Although significant sums have been expended toward compliance, the company will not be able to install an acceptable system in its convertibles until well over a year from now. Absent an exemption, it will not be able to sell its convertibles in the American market. Absent the income derived from these sales,

Maserati's financial condition will be negatively affected, delaying future compliance efforts. After consideration of these facts, the agency finds that to require compliance of Maserati convertibles at this point would create substantial economic hardship.

Maserati's previous petition was denied on the basis that a finding could not be made that the company had attempted in good faith to comply with Standard No. 208. The situation is different in this instance. In the time since the denial, the petitioner has been able to develop and install a passive restraint in some of its models, and is developing a driver air bag which it expects to install beginning in June 1991. Further, Maserati hopes to be able to implement a passenger side air bag by the end of 1991. To the agency, this represents a good faith effort to comply with Standard No. 208. Thus, NHTSA is able to find this time that the petitioner has made a good faith effort to conform.

Maintenance of the existing U.S. dealer and spare parts network is in the public interest, as is the continuing ability to afford the public a wide range of motor vehicles. An exemption would be consistent with the objectives of the National Traffic and Motor Vehicles Safety Act as it will permit sums to be expended toward an across-the-board introduction of airbags at the earliest possible time.

Accordingly, in consideration of the foregoing, Maserati is hereby granted NHTSA Temporary Exemption 90–1 from section S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems*, expiring June 1, 1991. This exemption applies to convertibles only.

Authority: 25 U.S.C. 1410; delegation of authority at 49 CFR 1.50.

Issued on February 26, 1990.

Jerry Ralph Curry,

Administrator.

[FR Doc. 90–4703 Filed 2–28–90; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. T84–01; Notice 23]

Final Passenger Motor Vehicle Theft Data for 1988

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Publication of final theft data for 1988.

SUMMARY: The Motor Vehicle Information and Cost Savings Act provides that NHTSA shall publish passenger motor vehicle theft data for review and comment "immediately upon enactment of this title, *and periodically thereafter.*" (Emphasis added). The periodic publication of these theft data does not have any effect on the obligations of regulated parties under the Cost Savings Act. These theft data for years after 1984 serve only to inform the public of the extent of the motor vehicle theft problem. NHTSA has previously published 1988 theft data for public review and comment. After evaluating those public comments, the agency has made some minor changes to the previously published 1988 data. This notice informs the public of those minor changes and of this agency's final calculations of 1988 theft data.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC, 20590 (202 366–4808).

SUPPLEMENTARY INFORMATION: NHTSA's Federal motor vehicle theft prevention standard (49 CFR Part 541) applies to cars that are in lines designated as "high theft lines." Whether or not a car line is a high theft line depends, as required by the Cost Savings Act, on the relationship of the line's actual or likely theft rate to the median theft rate for car lines in 1983 and 1984. Section 603(b)(3) of the Cost Savings Act (15 U.S.C. 2023(b)(3)) sets forth the steps NHTSA had to follow in making its determination of the median theft rate for 1983 and 1984. The agency followed those steps, published final theft data for the 1983 and 1984 car lines, and made a determination of the median theft rate for those years. *See* 50 FR 46666; November 12, 1985.

Section 603(b)(3) of the Cost Savings Act also provides that NHTSA shall "periodically" publish theft data from later calendar years for public review and comment. These publications of theft data for subsequent model years have no effect on the determination of whether a car line is or should be subject to the requirements of the theft prevention standard. The agency believes that the reason Congress directed it to periodically publish theft data for later years was to inform the public, particularly law enforcement groups, automobile manufacturers, and the Congress, of the extent of the vehicle theft problem and the impact, if any, on vehicle thefts of the Federal motor vehicle theft prevention standard.

To accomplish this purpose, NHTSA published for public review and comment the theft rates for 1988 on October 18, 1989 (54 FR 42809). The theft rates were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI). The data were fowarded to the agency in February 1989. NHTSA received one written comment on the 1988 theft data, from Volvo Cars of North America.

In the preliminary theft data, the agency had mistakenly separated the Volvo 780 from the Volvo 7 series. Volvo commented that the October 1989 publication should have treated the Volvo 780 car line as a part of the 740/760 car line because it is a continuation of the Volvo 7 series and is not a separate car line. The agency agrees that, under the definition of "car line" in § 541.4 of 49 CFR part 541, the Volvo 780 should have been shown in the proposal as part of the same car line as the Volvo 7 series. Accordingly, NHTSA has corrected the error in the preliminary notice. The theft rate for the Volvo 740/760/780 line has therefore been revised.

The preliminary 1988 data had shown thefts of two Rolls Royce passenger motor vehicles. Rolls Royce asked this agency to provide the Vehicle Identification Numbers (VINs) of these vehicles so the company could ensure that the stolen vehicles were Rolls Royce/Bentley vehicles. The VINs were provided, and Rolls Royce confirmed that the stolen vehicles were Rolls Royce/Bentley vehicles. The theft rate for the car line will therefore remain unchanged.

The following list represents NHTSA's calculation of theft rates for all 1988 car lines. As noted above, this list is only intended to inform the public of 1988 motor vehicle theft experience, and does not have any effect on the obligations of regulated parties under the Cost Savings Act.

Authority: 15 U.S.C. 2023; delegation of authority at 49 CFR 1.50.

Issued on February 26, 1990.

Jeffrey R. Miller,

Deputy Administrator.

MODEL YEAR 1988 THEFT RATES FOR CARS PRODUCED IN CALENDAR YEAR 1988

	Manufacturer	Make/Model (Line)	Thefts 1988	Production (Mfgr's) 1988	Theft Rate (Thefts/Product) (1988) (1,000's)
1	General Motors	Pontiac Firebird/Trans Am	1,659	56,449	29.3894
2	General Motors	Chevrolet Camaro	2,329	90,484	25.7394
3	General Motors	Chevrolet Monte Carlo	674	28,603	23.5640
4	Mitsubishi	Cordia	86	4,119	20.8789
5	Mitsubishi	Starion	78	3,945	19.7719
6	Chrysler Corp	Chrysler Conquest	178	9,581	18.5784
7	Mitsubishi	Mirage	323	17,735	18.2126
8	Aston Martin	Saloon/Vantage/Volante	1	56	17.8571
9	Volkswagen	Cabriolet	185	10,931	16.9243
10	General Motors	Pontiac Fiero	381	25,371	15.0171
11	Hyundai	Excel	3,326	231,551	14.3640
12	Porsche	911	93	6,532	14.2376
13	Volkswagen	Scirocco	50	3,690	13.5501
14	Alfa Romeo	Milano	24	1,870	12.8342
15	General Motors	Cadillac Brougham	580	48,964	11.8454
16	Porsche	928	19	1,613	11.7793
17	General Motors	Chevrolet Corvette	223	21,282	10.4783
18	Toyota	Supra	209	20,122	10.3866
19	Toyota	MR2	98	9,571	10.2393
20	Nissan	300ZX	206	20,224	10.1859
21	General Motors	Pontiac Bonneville	973	96,356	10.0980
22	Isuzu	I-Mark	248	24,684	10.0470
23	General Motors Corp	Dodge 600	166	17,080	9.7190
24	Isuzu	Impulse	88	9,070	9.7023
25	Ford Motor	Ford Mustang	1,750	180,724	9.6833
26	General Motors	Cadillac Seville	214	22,432	9.5399
27	Chrysler Corp	Dodge Shadow	853	91,304	9.3424
28	Honda	Prelude	688	77,601	8.8659
29	General Motors	Chevrolet Spectrum	529	61,377	8.6189
30	Volkswagen	Jetta	514	59,899	8.5811
31	Chrysler Corp	Lebaron Coupe/Convertible	686	85,956	7.9808
32	General Motors	Cadillac Fleetwood/DeVille	1,163	147,000	7.9116
33	Chrysler Corp	Chrysler Fifth Avenue/Newport	342	43,416	7.8773
34	Mitsubishi	Galant Sigma	71	9,027	7.8653
35	Mazda	323	791	101,161	7.8192
36	Ford Motor Co	Lincoln Continental	287	39,148	7.3312
37	Chrysler Corp	Plymouth Sundance	629	87,132	7.2189
38	General Motors	Pontiac Sunbird	488	70,380	6.9338
39	Nissan	Maxima	434	64,928	6.6843
40	General Motors	Chevrolet Cavalier	1,813	278,279	6.5150
41	BMW	3	192	29,550	6.4975
42	General Motors	Oldsmobile Delta 88 Royale	941	145,555	6.4649
43	Ford Motor Co	Ford Thunderbird	902	139,717	6.4559
44	Chrysler Corp	Dodge Daytona	417	65,187	6.3970
45	AMC/Renault/Chrysler	Eagle Medallion	149	23,413	6.3640
46	Porsche	924	13	2,061	6.3076
47	General Motors	Buick Riviera	51	8,290	6.1520
48	Chrysler Corp	Plymouth Caravelle	102	16,895	6.0373
49	General Motors	Chevrolet Impala/Caprice	798	132,963	6.0017
50	General Motors	Cadillac Allante	14	2,444	5.7283
51	General Motors	Pontiac 6000	502	88,270	5.6871
52	Ford Motor Co	Mercury Cougar	648	113,972	5.6856
53	Mazda	RX-7	221	39,166	5.6426
54	General Motors	Oldsmobile Toronado	90	16,106	5.5880
55	Chrysler Corp	Plymouth Colt/Colt Vista	252	45,141	5.5825
56	Porsche	944	33	5,931	5.5640
57	Chrysler Corp	Chrysler New Yorker	394	70,914	5.5640
58	Nissan	Pulsar	234	42,355	5.5247
59	Nissan	200 SX	97	17,597	5.5123
60	General Motors	Buick LeSabre	672	122,415	5.4895
61	General Motors	Oldsmobile 98/Touring	393	73,647	5.3363
62	General Motors	Chevrolet Beretta/Corsica	2,804	526,011	5.3307
63	Chrysler Corp	Dodge Colt/Colt Vista	269	50,716	5.3040
64	Ford Motor Co	Ford Escort/Exp	2,148	405,313	5.2996
65	Nissan	Sentra	1,354	259,171	5.2243
66	Chrysler Corp	Chrysler New Yorker Turbo	45	8,787	5.1212
67	Toyota	Cressida	59	11,795	5.0021
68	Mercedes-Benz	560SL	62	12,444	4.9823
69	General Motors	Oldsmobile Cutlass Supreme	556	112,333	4.9496
70	Ford Motor Co	Mercury Tracer	451	91,702	4.9181
71	Ford Motor Co	Lincoln Town Car	947	193,576	4.8921
72	General Motors	Cadillac Cimarron	31	6,377	4.8612
73	Chrysler Corp	Chrysler Lebaron/Town & Country	128	26,346	4.8584
74	Toyota	Celica	338	69,626	4.8545
75	Chrysler Corp	Dodge Lancer	45	9,282	4.8481
76	Ford Motor Co	Lincoln Mark VII	174	36,319	4.7909
77	General Motors	Pontiac Parisienne/Safari S/W	26	5,470	4.7532
78	Chrysler Corp	Dodge Dynasty	257	55,328	4.6450

MODEL YEAR 1988 THEFT RATES FOR CARS PRODUCED IN CALENDAR YEAR 1988—Continued

	Manufacturer	Make/Model (Line)	Thefts 1988	Production (Mfgr's) 1988	Theft Rate (Thefts/Product) (1988) (1,000's)
79	Chrysler Corp	Ford Tempo	1,239	267,401	4.6335
80	Ferrari	Mondial	1	216	4.6296
81	General Motors	Chevrolet Sprint	248	53,918	4.5996
82	Volkswagen	Golf/GTI	123	27,045	4.5480
83	Toyota	Corolla/Corolla Sport	988	218,280	4.5363
84	General Motors	Oldsmobile Cutlass Ciera	1,013	228,094	4.4412
85	Yugo	GY/GVX/GVL	166	37,592	4.4158
86	General Motors	Oldsmobile Cutlass Calais	455	103,111	4.4127
87	General Motors	Buick Electra	377	86,183	4.3744
88	Nissan	Stanza	171	39,370	4.3434
89	General Motors	Pontiac Grand Prix	341	78,541	4.4317
90	General Motors	Buick Skylark	220	52,494	4.1910
91	Subaru	XT	68	16,272	4.1790
92	Honda/Acura	Integra	217	52,340	4.1460
93	Toyota	Camry	904	219,155	4.1249
94	Chrysler Corp	Dodge Aries	453	110,907	4.0845
95	General Motors	Buick Electra/LeSabre Estate Wagon	36	8,848	4.0687
96	Chrysler Corp	Lebaron GTS	56	14,102	3.9711
97	Rolls-Royce/Bentley	Corniche/Continental/Mulsanne	2	504	3.9683
98	Ford Motor Co	Mercury Topaz	315	79,844	3.9452
99	General Motors	Buick Skyhawk	107	27,803	3.8485
100	Ford Motor Co	Mercury Sable	425	110,489	3.8465
101	General Motors	Chevrolet Celebrity	961	250,028	3.8436
102	General Motors	Oldsmobile Firenza	43	11,316	3.7999
103	Subaru	Justy	78	21,049	3.7056
104	Ford Motor Co	Ford Festiva	357	98,290	3.6321
105	General Motors	Buick Century	377	105,717	3.5661
106	Alfa Romeo	Spider Veloce 2000	8	2,256	3.5461
107	Toyota	Tercel	398	112,327	3.5432
108	Mercedes-Benz	300SEL	18	5,112	3.5211
109	General Motors	Buick Regal	428	121,774	3.5147
110	Ford Motor Co	Ford Taurus	1,263	361,038	3.4982
111	Daihatsu	Charade	47	13,522	3.4758
112	BMW	6	10	2,889	3.4614
113	Honda/Acura	Legend	281	81,826	3.4341
114	Mercedes-Benz	260E	21	6,188	3.3937
115	Mercedes-Benz	190D/E	52	15,414	3.3736
116	Austin Rover	Sterling	35	10,401	3.3651
117	BMW	7	72	21,484	3.3513
118	General Motors	Pontiac Grand Am	722	216,641	3.3327
119	Mercedes-Benz	300CE	9	2,731	3.2955
120	Mazda	929	92	28,749	3.2001
121	General Motors	Cadillac Eldorado	103	32,560	3.1634
122	General Motors	Pontiac Lemans	535	170,126	3.1447
123	Mercedes-Benz	300E	46	14,682	3.1331
124	Chrysler Corp	Plymouth Reliant	390	124,744	3.1264
125	Mercedes-Benz	560SEC	5	1,623	3.0807
126	Lotus	Espirt	1	325	3.0769
127	Ford Motor Co	Merkur XR4TI	19	6,271	3.0298
128	Mercedes-Benz	420SEL	24	7,960	3.0151
129	Honda	Accord	1,231	410,583	2.9982
130	Volkswagen	Fox	227	75,828	2.9936
131	Mercedes-Benz	560SEL	16	5,361	2.9845
132	General Motors	Oldsmobile Custom Cruiser Wagon	31	10,454	2.9654
133	Volvo	740/760/780	159	53,941	2.9477
134	Ford Motor Co	Mercury Grand Marquis	318	109,375	2.9074
135	General Motors	Buick Reatta	13	4,479	2.9024
136	Subaru	Subaru	192	67,838	2.8303
137	General Motors	Chevrolet Nova	308	109,196	2.8206
138	Jaguar	XJ6	63	22,753	2.7689
139	Volkswagen	Quantum	8	2,970	2.6936
140	Suzuki	Forsa	12	4,587	2.6161
141	Saab	900	97	37,171	2.6096
142	BMW	5	55	22,409	2.4544
143	Honda	Civic	544	225,907	2.4081
144	AMC/Renault/Chrysler	Eagle Premier	94	40,326	2.3310
145	Saab	9000	33	14,765	2.2350
146	Mazda	626	223	108,799	2.0497
147	Ford Motor Co	Ford LTD/Crown Victoria	233	114,678	2.0318
148	Chrysler Corp	Plymouth Horizon	119	61,051	1.9492
149	Chrysler Corp	Dodge Omni	115	59,181	1.9432
150	Volvo	240 DL/GL	76	40,894	1.8585
151	Chrysler Corp	Plymouth Gran Fury	21	11,422	1.8386
152	Ferrari	328	1	560	1.7857
153	Ford Motor Co	Merkur Scorpio	28	16,067	1.7427
154	Mitsubishi	Precis	44	26,307	1.6726
155	Audi	80 & 90 Series	24	16,014	1.4987
156	Audi	5000s/Quattro	10	7,910	1.2642

MODEL YEAR 1988 THEFT RATES FOR CARS PRODUCED IN CALENDAR YEAR 1988—Continued

	Manufacturer	Make/Model (Line)	Thefts 1988	Production (Mfgr's) 1988	Theft Rate (Thefts/Product) (1988) (1,000's)
157	Mitsubishi	Tredia	4	3,514	1.1383
158	Mercedes-Benz	300SE	4	3,600	1.1111
159	Chrysler Corp	Dodge Diplomat	18	19,165	0.9392
160	Peugeot	505	6	8,128	0.7382
161	Mercedes-Benz	300TE	2	2,738	0.7305
162	Bertone	X-1/9	1	2,000	0.5000
163	Jaguar	XJ-S	2	5,662	0.3532
164	Ferrari	Testarossa	0	376	0.0000
165	Excalibur	Phaeton/Roadster	0	79	0.0000
166	Aston Martin	Lagonda	0	9	0.0000
167	Zimmer	Classic/Elegante/Cabriolet	0	170	0.0000
168	Rolls-Royce/Bentley	Camargue/Silver Spirit/Silver Spur	0	711	0.0000
169	Bitter GMBH	Bitter SC	0	82	0.0000
170	TVR	2801	0	225	0.0000

Sunshine Act Meetings

Federal Register
Vol. 55, No. 41
Thursday, March 1, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 6, 1990, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes
Draft Advisory Opinion 1990-3: Jonathan A. Hattenbach on behalf of The City Political Action Committee
Legislative Recommendations
Administrative Matters

DATE AND TIME: Tuesday, March 6, 1990, To Be Convened After the Open Meeting.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 90-4805 Filed 2-27-90; 11:54 am]
BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., March 6, 1990.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573-0001

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public

1. Docket No. 89-04—Equipment Interchange Agreements Tariff Publication of Free Time and Detention Charges—Consideration of Comments.

Portion Closed to the Public

1. Matson Navigation Company, Inc. General Rate Increase in the Pacific Coast/Hawaii Trade.
2. Docket No. 88-5—*Port of Ponce v. Puerto Rico Ports Authority*—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,
Secretary.
[FR Doc. 90-4874 Filed 2-27-90; 8:45 am]
BILLING CODE 6730-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that on Saturday, February 24, 1990, at 11:15 a.m., the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to the financing of case resolutions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 500 — 17th Street NW., Washington, DC

Dated: February 26, 1990.

Resolution Trust Corporation.
John M. Buckley, Jr.,
Executive Secretary.
[FR Doc. 90-4775 Filed 2-27-90; 8:45 am]
BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 55, No. 41
Wednesday, March 1, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

RIN 0960-AC50

Supplemental Security Income for the Aged, Blind, and Disabled

Correction

In rule document 90-2852 beginning on page 4421 in the issue of Thursday, February 8, 1990, make the following corrections:

§ 416.520 [Corrected]

1. On page 4422, in the second column, in § 416.520(b)(1), in the last line insert a closing parenthesis after "section".

2. On the same page, in the third column, in § 416.520(c), in the last line "months" should read "amounts".

BILLING CODE 1505-01-D

federal register

Thursday
March 1, 1990

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135
Miscellaneous Operational Amendments;
Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135

[Docket No. 26142; Notice No. 90-6]

RIN 2120-AB45

Miscellaneous Operational Amendments

AGENCY: Federal Aviation Administration (FFA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration proposes to amend several sections of the Federal Aviation Regulations (FAR). Air carriers would be required to accept approved child restraint systems provided by a parent or guardian. Lighted passenger information signs would have to be turned on while the aircraft is moving on the surface, and compliance with the signs would be mandatory for both passengers and crew. Passenger service equipment would have to be stowed and inflatable slides (or other means of emergency evacuation) would have to be armed during movement on the ground. Helicopter crews would generally be required to wear shoulder harnesses during takeoff and landing. Airships would have to be equipped with safety belts, and passengers would be briefed before flight on the use of such belts. An independently powered attitude indicator would be required on turboprop airplanes. Finally, the proposal would clarify requirements for the location of fire extinguishers and protective breathing equipment for use in galleys and would delete an obsolete provision on check airmen.

DATES: Comments must be received on or before May 30, 1990.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26142, 800 Independence Avenue, SW., Washington, DC. All comments must be marked "Docket No. 26142." Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Larry Youngblut, Project Development Branch (AFS-240), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-3755.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are hereby notified that they may submit written data, views, or arguments on any issue that may have bearing upon this proposed rule, including the possible environmental, economic, or energy impact of this proposal. The comment should identify the regulatory docket or notice number and be submitted in duplicate to the above address. All comments received, as well as a report summarizing any substantive public contact with Federal Aviation Administration (FAA) personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

Before taking final action on the proposal, the Administrator will consider comments made on or before the comment closing date. The proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter submits with the comment a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26142." When the comment is received, the postcard will be dated, time stamped, and returned to the commenter.

Availability of Notice of Proposed Rulemaking (NPRM)

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should be identified by the NPRM number or docket number. Persons interested in being placed on a mailing list for future proposed rules should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The purpose of the proposed amendments is to increase passenger and crewmember safety aboard aircraft. The FAA has received information from a variety of sources that shows the need for these amendments. These sources include complaints from the public, consumer groups, and Congress about smoking aboard aircraft and passenger noncompliance with crewmember instructions concerning smoking and the fastening of safety belts. In addition, these same sources have stated that some air carriers do not allow the use of child restraint systems aboard airplanes even when a passenger purchases a ticket for this purpose. In addition, reports from FAA inspectors indicate that improperly stowed food and beverage trays, passenger service carts, and movie screens may hamper passenger emergency evacuations that become necessary because of incidents during airplane movement on the surface. Moreover, investigations conducted by the National Transportation Safety Board (NTSB) show that safety belts and shoulder harnesses can save lives in aircraft crashes and the required use of these safety devices should be expanded. In addition, the NTSB issued Safety Recommendation No. A-80-19, which recommends that the FAA require an additional attitude-indicating instrument on large turboprop airplanes. Fourth, the airline industry has questioned the FAA regarding the fire extinguishing equipment and its location on board an airplane.

The FAA notes that several regulations contain references to obsolete dates and one regulation has been replaced by other sections of the Federal Aviation Regulations (FAR). These obsolete references would be deleted in the proposal.

The amendments proposed in this notice result from information gathered from all of the above sources. They are combined in this NPRM to expedite safety improvements.

Discussion of the Proposals

Passenger Information

The FAA has identified three problems concerning passenger information regulations. First, the regulations do not require that the lighted passenger information signs (i.e., the "no smoking" and "fasten seat belt" signs located in certain aircraft passenger compartments) be turned on while the airplane is moving on the surface. Second, certain regulations do not require passenger compliance with lighted passenger information signs, posted signs and placards, and crewmember safety-related instructions. Third, some passenger briefing requirements lack specific information concerning safety belts, smoking aboard aircraft, or passenger compliance with the regulations.

Aircraft Movement on the Surface. Most air carriers and other operators that are required to install passenger information signs that meet the requirements of § 25.791 of the FAR keep passenger information signs turned

on (lighted) while the airplane is moving on the surface. The FAA proposes to make this industry practice a regulatory requirement by revising §§ 91.197, 121.317(b) and (c)(2), 125.217, 135.127(a)(2), and 135.177(a)(3) of the FAR. [Part 91 will be completely revised as of August 18, 1990 (see 54 FR 34284; August 18, 1989) to renumber all of its sections. Section 91–197 will be renumbered as § 91.517. Hereafter in this preamble, references to the renumbered part 91 will be shown in brackets.] The proposal would require the pilot in command or operator of the airplane when conducting operations under part 91, or the certificate holder when conducting operations under parts 121, 125, or 135 to turn on the passenger information signs while the aircraft is moving on the surface. In addition, the FAA proposes to amend §§ 91.14(a)(3) [91.107(b)], 121.311(b), and 125.211 of the FAR to require that each person on board an aircraft fasten his or her safety belt during aircraft movement on the surface.

Compliance. Parts 91, 121, 125, and 135 of the FAR require that the "no smoking" and "fasten seat belt" signs be installed on aircraft. However, some of these parts do not have sections that require passenger or cabin crewmember compliance with the information signs. Therefore, the FAA proposes a revise §§ 91.197 [91.517]; 121.317(f), (g), and (i); 125.217; and 135.127 of the FAR so that compliance with these sections of the FAR is mandatory. The proposed regulations would specify that passenger and cabin crewmembers must comply with the lighted "no smoking" signs and any "no smoking" placards and that each passenger must comply with the lighted "fasten seat belt" signs and all crewmember instructions with regard to these items.

Passenger Briefings. Passenger briefings are required by parts 91, 121, 125, and 135 of the FAR. The FAA proposes to review §§ 91.199(a)(1) and (2) [91.519(a)(1) and (2)], 121.571(a)(1)(i) and (iii), 125.327(a)(1) and (2), and 135.117(a)(1) and (2) of the FAR as appropriate so that all the passenger briefings include certain information. Although the information contained in these briefings may vary, each briefing would have to include when, where, and under what conditions smoking is prohibited; how to fasten and unfasten safety belts; and when, where, and under what conditions the safety belts must be fastened. Passengers would have to be told that the FAR require passengers to comply with lighted passenger information signs and "no smoking" placards, that smoking is prohibited in the lavatory, and that passengers are required to comply with crewmember safety-related instructions.

The FAA also proposes to revise § 121.317(e) to remove an obsolete date.

Child Restraint Systems

The FAA is concerned about the safety of infants (children under 2 years of age) in aviation, and strongly advocates parents' use of child restraints. Evidence from highway transportation shows that proper child restraint systems reduce injuries to infants and save infant lives. As a result, every state now has a child restraint requirement. However, under current regulation and practice in aviation, infants may travel on the lap of parent or guardian and are not required to be placed in a restraint system. This is the case because of low exposure due to the safety of aviation: accident and incident raters are so low that there is only a extremely small risk of injury to unrestrained infants.

Nevertheless, in some survivable accidents, forces generated by the crash can exceed the parents' physical ability to restrain a child safely. In addition, it is possible that in rare encounters of severe clear air turbulence, similarly high forces could be generated, posing a potential danger to unrestrained infants.

Neither the FAA nor the National Transportation Safety board (NTSB) is able to identify the number of infants who travel in the aviation system. Similarly, the FAA lacks sufficient data regarding injuries and fatalities to infants to accurately analyze the impact of making child restraints mandatory. For the reasons, the FAA solicits comments on the following:

1. Estimates or evidence of the number of infants traveling in the aviation system;

2. Documentation or other evidence on child fatalities and injuries in aircraft in which a child restraint system may have made a difference;

3. Carriers' willingness to provide restraint systems or free tickets on selected routes and flight as a competitive strategy; and

4. Parents' willingness to purchase an extra seat for an infant's restraint system.

5. Public's desire to make use of child restraint systems aboard aircraft mandatory.

In addition, the FAA has received complaints from the public and Congress that some air carriers refuse to allow the use of child restraint systems even if the systems are approved for use in aircraft and even if a ticket is purchased for a passenger seat to accommodate the child restraint system. In addition to these complaints, the FAA has received several petitions for rulemaking concerning child restraint systems. Therefore, the FAA proposes to revise §§ 91.14(a)(3)(iii) (91.107(a)(3)(iii)), 121.311(b)(2), and 125.211(b)(2) and add a new § 135.128 so that the holder of either an air carrier operating certificate or an operating certificate would be required to accept an approved child restraint system if requested and provided by the parent, guardian, or person (attendant) designated by the child's parent or guardian for the child.

An Aviation Consumer Action Project (ACAP) petition for rulemaking (Docket No. 23833) recommends that air carriers be required to make FAA-approved child restraint systems available to passengers who request them at least 24 hours prior to scheduled flights. In its petition, ACAP argues that it is the burden of the FAA and the air carriers to make safe seating available for children; that it is excessively expensive, burdensome, and impractical to parents or guardians to purchase and to bring child restraint systems to airports; and that the annual safety benefits of requiring air carriers to make safe seating available the cost over a 5-year period by a ratio of 11:1.

Another petition for rulemaking from Mr. Stuart R. Miller (Docket No. 25985) recommends that a properly certified infant or child restraint system be required for a child under 3 years of age during takeoff, landing, and when the pilot in command deems it necessary.

Lastly, a petition for rulemaking from the Los Angeles Area Child Passenger Safety Association (LAACPSA) recommends that a properly certified child restraint system be required for each child within certain weight and height limitations; the child could use his own safety seat or a safety seat provided by the air carrier. If the air carrier provides the safety seat, it would also provide free stowage of personal safety seats. In its petition, LAACPSA states it has found that adults cannot hold children safely on their laps, that adults have encounted different policies among air carriers concerning the use of child restraint systems, that air carriers are not consistent in the administration of those policies, and that adults prefer to use personal safety seats and have them available in the cabin.

The FAA has identified eight commercial airline accidents and incidents over the last 15 years involving infants and small children in which the proper use of child restraint systems might have reduced casualties.

Research conducted at the FAA's Civil Aeromedical Institute and the Arvin/Calspan Advanced Technology Center has provided information regarding the types of systems that should be approved for use in aircraft. This research has also demonstrated that children properly restrained in child restraint systems that are properly secured to passenger seats have an increased chance of surviving accidents. In addition, an approved child restraint system will not interfere with the safety features built into aircraft passenger seats. Thus, the use of a child restraint system provides a safe alternative to placing a child either in a passenger seat or, in the case of children less than 2 years old, in a parent's or guardian's arms.

Based on the information stated above, the FAA considered two different rule alternatives concerning the use of child restraint systems aboard aircraft.

The first alternative would be to adopt a rule similar to those rules adopted by all the States and the District of Columbia that require all children under a certain age or weight/height to use approved child restraint systems when riding in motor vehicles. As a minimum, most States require child restraint systems for children under age 3 or 40 pounds. Under this alternative, each child under age 3 or 40 pounds would have to be provided with a child restraint system by the operator of an aircraft in common carriage. It this alternative were adopted, a parent or guardian probably would be required by the air carrier to buy a ticket for each child under age 2, who, under the current rules, may travel for free when held in a parent's or guardian's arms. This alternative would also require certificate holders to buy and to maintain a stock of approved child restraint systems for use aboard their aircraft. In addition, for a family of four, depending on whether one or both of the children are under 2 years of age, this alternative could substantially increase the cost of air travel.

A preliminary analysis of the potential costs of a mandatory rule indicates a significant economic cost. Under the mandatory rule proposal, the certificate holder would be responsible for providing an approved child restraint system to all children less than 3 years old and/or weighing less than 40 pounds. However, since the child restraint system must be placed on an aircraft seat, the parent or guardian of the child would have to pay to use that seat. Thus, families with children under 2 years would no longer be able to expect to have them ride for free.

The FAA estimates that the average price for a U.S. scheduled domestic flight is $103.78 (in 1989 dollars) and a U.S. scheduled foreign flight is $281.62. The weighted average of these two is $118.30 per flight. The FAA assumes that half of the average price would be charged for children under 2, which is the same as the policy followed by some airlines for children between 2 and 5 years of age. Half of the $118.30 per flight is $59.15 per flight, and this would be the most significant additional cost for children 2 and under because of a mandatory child restraint rule.

Next, the cost for the use of the child restraint system itself must be considered. The major automobile rental companies charge an average of $3 per day for use of a child safety seat. The FAA will use this $3 as a proxy for the usage rental for an approved child safety seat.

Adding this cost to the average price of a ticket for an aircraft seat means that, under the stated assumptions, the mandatory rule alterantive would cost $62.15 for children 2 and under per enplanement. Children age 2 to 3 are already being charged for a ticket; therefore, the extra cost would be $3 for a child age 2 to 3. Pricing policies are, however, many and varied among airlines. The FAA specifically invites comment on these cost assumptions but believes that those used herein represent a lower bound to the cost of this alternative. Actual costs may be substantially higher.

The above analysis has not taken into account travel reduction because of these additional costs. The FAA estimates that there are roughly 4 million annual enplanements of passengers age 2 and under on U.S. scheduled airlines and that there are roughly 2 million annual enplanements of passengers age 2 to 3. (The FAA welcomes other estimates of the numbers of young children flying.) To estimate the total cost, the FAA needs to calculate a reduction in the number of children under 2 flying; due to the small price penalty for children between 2 and 3, no enplanement reduction is assumed for this range.

To estimate the reduction in the number of children under 2 that would be flying, the FAA assumes the average child of this age travels with two adults and one other child between the age of 3 and 5. At present, the total family fare is estimated to be two full fares and one half fare that, using the average fares cited above, will cost $295.75. With the mandatory rule alternative, the price to the family would increase by $62.15. Thus, the total price to the family becomes $357.90, which represents a 21 percent increase.

The FAA has estimated the elasticity of all U.S. revenue passenger miles to changes in fare prices. In a recent study the FAA estimated this elasticity to be −.8212. (This means a 10 percent increase in fares would lead to an 8.2 percent decrease in revenue passenger miles.) For young children, the demand is probably more elastic, i.e., a greater percentage response to price changes since children are flying on vacation trips as opposed to business trips, which are much less responsive to price increases than vacation trips.

Using this cost and elasticity data, the FAA estimates that the annual number of enplanements for infants and children 2 and under would be 3,310,000. It is estimated that the families of 700,000 children, then, might refrain from flying because of the additional costs imposed by this alternative.

Multiplying the estimated number of enplanements by the average cost of an infant ticket and adding this to the number of children between 2 and 3 that would need these seats, the total monetary cost of a mandatory rule, in current dollars, would be $211,716,500 per year. In addition, there is clearly a non-monetary societal cost associated with the families of these 700,000 children refraining from the use of air transportation. In view of the total cost of such a requirement, the FAA is not proposing it at this time, but does invite comments on the desirability of such a requirement. The FAA will consider these comments in formulating a final rule in this proceeding.

The second alternative would be to adopt a rule that would make the use of child restraint systems optional. Under this alternative, a child's parent, guardian, or person (attendant) designated by the child's parent or guardian, who provides an approved child restraint system for his child and purchases a ticket for that child, may have that child use the child restraint system aboard any aircraft operated in common carriage. Under these conditions, a certificate holder could not prohibit the child from using the child restraint system aboard its aircraft. This alternative rule would allow the parent or guardian the option of either holding a child under 2 on his lap or using a child restraint system.

Accordingly, the FAA proposes to require a certificate holder to allow the use of an approved child restraint system on its aircraft when requested and provided by the child's parent,

guardian, or attendant either when a ticket is purchased for a seat to place the restraint system in or when a seat is otherwise made available by the certificate holder for the child's use.

With respect to the three petitions for rulemaking discussed previously, the FAA finds that adopting any one of the proposals would place a large economic burden on society, the benefits of which have not been clearly established. The petition for rulemaking submitted from ACAP would require air carriers to provide a child restraint system if requested in advance. All States and the District of Columbia require the use of child restraints in private motor vehicles. Thus, most passengers who have young children already own one or more child restraint systems. Requiring air carriers to purchase these systems is duplicative.

This would also break a valuable "chain" of safety seat usage. Instead of using the same child restraint system from home to airport, in flight, and at the destination, multiple child restraint systems would be required. This action may reduce the number of child restraint systems used when children must travel. Therefore, the FAA has determined that the certificate holder should not be required to purchase child restraint systems for use aboard aircraft.

Unlike the petition submitted by ACAP, which would require the use of a child restraint system upon a parent's or guardian's request, the other two petitions would require the use of child restraint systems aboard all common carriage flights, similar to the mandatory usage alternative discussed above. Such a regulation could require a parent or guardian to purchase a ticket in order to use the child restraint system. Due to the potential cost, and to ensure the most extensive use of child restraint systems as soon as possible, the FAA at this time proposes only to require an aircraft operator to allow the use of an approved child restraint system on its aircraft when such use is requested and a proper restraint is provided by the child's parent, guardian or attendant either when a ticket is purchased for a seat to place the restraint system in or when a seat is otherwise made available by the certificate holder for the child's use. However, since the FAA has specifically requested comments on the option of making child restraint systems mandatory, any final rule adopted in this proceeding could require the use of these systems.

Installation of Child Restraint Systems. The FAA has determined that a child restraint system approved for use on board aircraft when provided by the child's parent, guardian, or person (attendant) designated by the child's parent or guardian, can be secured to an airlines seat or berth for the benefit of the child.

Securing of the child restraint system to the aircraft seat requires no modification or alteration of the previously approved and installed passenger seat or safety belt. Because of their experience in the use of their particular child restraint systems, parents, guardians, and attendants designated by the children's parents or guardians who want to use their child restraint systems aboard aircraft would be allowed to secure and remove the child restraint system from the passenger seat. However, the certificate holder, consistent with safe operating practices, would be required to determine the most appropriate passenger seat location for the child restraint system and ensure that each child is properly secured in the child restraint system, that the person does not exceed the specified weight limit for the restraint system, and that the restraint system is properly secured to the passenger seat with the safety belt during movement on the surface, takeoff, and landing and when any seat belt sign is lighted.

Approved Child Restraint Systems. The child restraint system used must be certified and approved for use aboard aircraft. An approved system will have labels required by the Federal Motor Vehicle Safety Standard No. 213 (49 CFR 571.213). The labels on approved systems manufactured between January 1, 1981, and February 25, 1985, will state:

This child restraint system conforms to all applicable Federal motor vehicle safety standards.

Child restraints manufactured on or after February 26, 1985, must have two labels if approved for use in aircraft:

This child restraint system conforms to all applicable Federal motor vehicle safety standards.

and

THIS RESTRAINT IS CERTIFIED FOR USE IN MOTOR VEHICLES AND AIRCRAFT.

The proposed amendment would require the holder of either an air carrier operating certificate or an operating certificate to accept an approved child restraint system if requested and provided by the parent, guardian, or attendant responsible for the child as long as:

—The parent, guardian, or child's attendant has purchased a ticket for a seat, or a seat is otherwise made available by the certificate holder for the child's use;

—The child is accompanied by a parent, guardian, or an attendant designated by the child's parent or guardian to attend to the safety of the child during the flight;

—The restraint system can be properly secured to an approved seat or berth;

—The child can be properly secured in the restraint system and does not exceed the specified weight limit for the restraint system;

—The restraint system bears the appropriate label showing that the system is approved for use on board aircraft; and

—The restraint system has no obvious defect and will function properly when installed.

The FAA solicits comments on each of the above requirements and their implementation. In particular, the FAA solicits comments on whether a flight attendant can determine if a child restraint system is properly secured to a passenger seat. Current knowledge leads the FAA to conclude that a flight attendant can make such a determination; however, flight attendants' past experiences with child restraint systems may demonstrate that this is not true.

Another provision on which the FAA solicits comments is that which states that a certificate holder or operator may refuse to permit the use of an approved child restraint system if, in the certificate holder's or operator's judgment, the restraint system has an obvious defect and the certificate holder or operator believes that the child restraint system may not function properly when installed. The FAA intends this provision to give the certificate holder or operator a reasonable amount of control over what is allowed on board its aircraft. The certificate holder should not be required to allow the use of a child restraint system that could induce an injury, due to a sharp or jagged edge, missing padding, frayed webbing, or other obvious hazards associated with the system, that the child may not otherwise sustain or because the child is too big for the restraint system. The FAA solicits comments on whether a certificate holder can reasonably make such determinations concerning a child restraint system.

Passenger Service Equipment

FAA inspectors have reported instances in which passenger food and beverage trays, passenger service carts, and movie screens that extend into the aisle were not stowed in secured positions while the aircraft was moving

on the surface. The FAA proposes to add new §§ 91.217 [91.535], 125.333, and 135.122 and revise § 121.577 of the FAR to require a certificate holder or operator to secure in stowed positions all food and beverage trays, passenger service carts, and movie screens that extend into an aisle during aircraft movement on the surface when passengers are on board.

Any passenger food and beverage tray, service cart, or movie screen that extends into the aisle that is not stowed in a secure position while the aircraft is moving on the surface could become safety hazard. Should an emergency evacuation become necessary during aircraft movement on the surface, passengers would be blocked in their seats if their food and beverage trays are down. In addition, passengers would be hampered or prevented from moving down an aisle or exiting the aircraft if a passenger service cart is in the aisle or blocking an exit. Movie screens that extend into the aisle present the same hazard as the food and beverage equipment. Thus, passenger service equipment would be required to be stowed during aircraft movement on the surface.

Fire Extinguishers and Protective Breathing Equipment (PBE)

The FAA has received numerous questions and complaints from certificate holders and from its aviation safety inspectors requesting clarification of §§ 121.309 and 121.337 of the FAR. Therefore, the FAA proposes to revise §§ 121.309(c) and 121.337(b)(9)(ii) of the FAR for clarity and conformity. Section 121.309(c) would be reorganized by specifying the airplane compartments for which hand fire extinguishers would be provided for use. Section 121.337(b)(9)(ii) would be revised to conform to the proposed language in § 121.309(c)(3) as discussed below.

Section 121.309(c) of the FAR requires that a fire extinguisher be located in each upper- and lower-lobe galley. Section 121.337 of the FAR contains requirements for PBE. Section 121.337(b)(9)(ii) of the FAR requires one PBE for each hand fire extinguisher located in each upper- and lower-lobe galley, where the galley encompasses the entire upper- or lower-lobe compartment space. Many of the questions received by the FAA asked for a definition of "upper and lower lobe." Rather than define upper and lower lobe, the FAA proposes to remove the requirements for hand fire extinguishers and PBE to be located in upper- and lower-lobe galleys and add, in their place, the requirements for hand fire extinguishers and PBE to be conveniently located for use in each galley located in a compartment other than a passenger, cargo, or crew compartment.

There were also complaints concerning the requirements in both of these sections to locate hand fire extinguishers and PBE in galleys that lack the physical space for their installation. The FAA recognizes that it would be impossible to install this equipment in some galleys. In addition, with respect to galleys located in passenger compartments, the FAA proposes to require at least one hand fire extinguisher to be conveniently located and easily accessible for use in each galley, notwithstanding the requirement in current § 121.309(c) of the FAR for hand fire extinguishers to be uniformly distributed throughout each passenger compartment.

Safety Belts in Airships

The FAA recently amended part 21 of the FAR by adding § 21.17(b) (Amendment 21–60; 52 FR 8040; March 13, 1987) to provide for the type certification of special classes of aircraft, which include gliders and airships. Airship design now requires the installation of safety belts.

Section 21.17(b) of the FAR designates the applicable airworthiness standards for airships in very general terms. The FAA provides an acceptable means for the type certification of airships in Advisory Circular (AC) 21.17–2, Type Certification—Airships, and the companion document FAA P–8110–2, Airship Design Criteria (ADC). The ADC explains that the U.S. airship airworthiness criteria are based in part on Part 23 of the FAR, Section Q of the British Civil Airworthiness Requirements, and the U.S. Navy detailed design specifications. The ADC contain requirements for the installation of safety belts.

Current § 91.14(a) (1), (2), and (3) (91.107 (a) and (b)) of the FAR excludes airships from the requirements that passengers be briefed on how and when to fasten their safety belts and that each occupant who has reached his second birthday have a safety belt in his seat. Section 91.33(b)(12) (91.205(b)(12)) of the FAR excludes airships from having to have approved safety belts available for all occupants who have reached their second birthday.

The FAA proposes to revise §§ 91.14(a) (1), (2), and (3) (91.107 (a) and (b)) and 91.33(b)(12) (91.205(b)(12)) of the FAR by removing the exclusions for airships type certificated on or after November 2, 1987.

Section 91.33(b)(12) (91.205(b)(12)) of the FAR also would be modified to remove an obsolete compliance data and improve clarity.

Section 91.14(b) (91.107(c)) would be revised to remove an obsolete reference to Part 123, which is no longer in effect.

Shoulder Harnesses

Current § 91.7(b) (91.105(b)) of the FAR requires each crewmember of U.S.-registered civil airplanes to use a shoulder harness during takeoffs and landings, but only if the crewmember's seat is equipped with a shoulder harness and the crewmember is able to perform required duties with the shoulder harness fastened. In proposed § 91.7(b) (91.105(b)) of the FAR, this requirement would be expanded to all U.S.-registered civil aircraft.

On November 19, 1985, the NTSB issued Safety Recommendation No. A–85–117. The NTSB recommended that the FAA amend § 91.7(b) (91.105(b)) of the FAR to require flight crewmembers of U.S.-registered civil aircraft to keep their shoulder harnesses fastened while at their assigned duty stations during takeoffs and landings. This safety recommendation resulted from an NTSB investigation of a fatal accident that occurred on April 4, 1984. The accident involved an Aerospatiale Twinstar (AS–355) helicopter that was not equipped with shoulder harnesses. The pilot received incapacitating head injuries as a result of his head striking the instrument panel and center console. The NTSB concluded that if the pilot's station had been equipped with a shoulder harness and the harness was worn, the pilot could have survived and deployed the emergency equipment aboard the helicopter, thus saving at least one and possibly two of the passengers.

In another accident (Accident No. LAX 84–F–A498; N915ER, September 27, 1984), three people survived an aircraft accident at an airspeed of 105 knots and with a descent rate of approximately 1,000 feet per minute because they were wearing shoulder harnesses and safety belts. Investigations of similar accidents show that the use of shoulder harnesses and safety belts can save lives. Therefore, the FAA proposes that each crewmember of a U.S.-registered civil "aircraft" (expanded from U.S. civil "airplane") be required to use a shoulder harness during takeoffs and landings if the crewmember's seat is so equipped. In addition, the section would be amended to remove an obsolete compliance date.

Passenger Evacuation

Section 121.310(a) of the FAR requires, with certain exceptions, passenger-carrying airplanes to be equipped with automatic deployable emergency

evacuation assisting means for each emergency exit (other than over-the-wing). Typical of these means are inflatable slides and slide-rafts. The regulation also requires these assisting means to be armed during taxi, takeoff, and landing. However, § 121.310(a) of the FAR does not require that similar equipment and procedures be available before the airplane is moving on the surface. Thus, current regulations do not specifically require certificate holders to provide an expeditious way for passengers to exit an airplane while at the gate with the jetway moved back.

The FAA proposes to add a new § 121.570, which would establish a requirement to make the certificate holder or operator responsible for providing an approved means of passenger egress at all times prior to airplane movement on the surface when passengers are on board. New § 121.570 would also restate the provisions contained in § 121.310(a) of the FAR for arming the emergency evacuation means and would add a requirement for such means to be armed during airplane movement on the surface.

Attitude Indicators

On November 18, 1979, a Transamerica Airlines Lockheed L–188C Electra, with three crewmembers on board, reported a loss of electrical power while climbing on departure in instrument flight rule (IFR) conditions. The failure of the airplane's electrical system disabled critical flight instruments. As a result of the instrument failure, the flightcrew could not determine the attitude of the airplane. The crew became spatially disoriented and lost control of the airplane. The crew could not regain control and the airplane broke up in flight.

On May 30, 1984, a Zantop International Airlines Lockheed Electra L–188, with three crewmembers and a non-revenue passenger on board, experienced gyro problems during its departure climbout. Because the No. 2 vertical gyro system indicated there was a malfunction, the crew selected the No. 1 vertical gyro to drive both of the pilot's attitude indicators. After being cleared by air traffic control to turn on course, the flightcrew could not determine the proper airplane attitude. The crew entered an unusual attitude and lost control of the airplane. The airplane entered a right descending spiral as the indicated airspeed increased from 205 knots to 317 knots. The airplane experienced structural failure during flight.

As a result of these two accidents, in which the airplanes experienced either total or partial loss of electrical power to its attitude-indicating instruments, the NTSB issued Safety Recommendation No. A–80–19. This safety recommendation, if adopted, would revise § 121.305 to extend its applicability to all large turboprop airplanes. Therefore, the FAA proposes to revise § 121.305 to require an additional attitude-indicating instrument, for bank and pitch, operating from a source of power independent of the normal electrical generating system for all large nonreciprocating-engine-powered airplanes as is now required for all large turbojet airplanes. The FAA specifically solicits comments regarding the proposed implementation date of 2 years from the effective date of any final rule resulting from this proposal.

Check Airman Practical Tests

The FAA has determined that § 135.303 of the FAR is obsolete. Check airman training and checking requirements are now included in §§ 135.337 and 135.339 of the FAR. Therefore, the FAA proposes to remove § 135.303.

Regulatory Evaluation Summary

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for the regulatory change outweigh the potential costs to society. The order also requires the preparation of a draft Regulatory Impact Analysis of all "major" proposals except those responding to emergency situations or other narrowly defined exigencies. A "major" proposal is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

This set of proposals is determined not to be "major" as defined in the Executive Order, so a full draft analysis evaluating alternative approaches has not been prepared. A more concise draft regulatory evaluation has been prepared, however, which includes an analysis of the economic consequences of the proposed regulation modifications. This analysis is included in the docket and quantifies, to the extent practicable, estimated costs as well as the anticipated benefits and impacts.

In this regulatory evaluation, the FAA evaluated nine proposed amendments. All but one of these proposed rules would impose no significant costs. The FAA found that all nine proposals are cost beneficial. A summary of the evaluation of each of these nine proposals is contained in this section. For a more detailed analysis, the reader is referred to the full draft evaluation contained in the docket.

Child Restraint Systems

The FAA proposes that certificate holders be required to accept for use in passenger seats approved child restraint systems provided by a child's parent, guardian, or attendant. From an economic perspective, the germane point of the proposed regulation is its optional nature. The greatest impact of the regulation would be on those parents of children under 2 who decide to place their children in child restraint systems. The cost to them would be the purchase of a ticket for an airline seat to use for the child restraint system. Children under 2 could still fly for free if they sit in their parent's lap. The parent's additional cost would not be a cost of the regulation since it would not be required. Moreover, the air carriers would not be required to purchase or to stock these restraint systems; therefore, they would incur no costs.

The FAA has identified eight commercial airline accidents and incidents over the last 15 years involving infants and small children in which the proper use of child restraint systems might have reduced casualties. The FAA seeks comment about the number of infants and small children involved in these type of accidents and incidents and on the number of small children and infants enplaned.

For purposes of this analysis, the FAA used studies on the benefits of using child restraint systems in automobiles. This was necessitated by the dearth of information about the effectiveness of these systems on aircraft. National Highway Traffic Safety Administration data shows that child restraint systems were 69 percent effective in preventing injuries and fatalities to infants in automobile accidents. Accordingly, the FAA used this figure for calculating total benefits resulting from using such systems. The FAA seeks comment on the appropriateness of this figure, given the vast difference in the dynamics between aircraft and automobile crashes. In addition, because the FAA cannot ascertain the number of parents who would take advantage of this option, implicit in this analysis is the assumption that all parents would elect to provide systems for their children.

The 69 percent was applied to the number of infants and small children (5) who died in survivable crashes, and the resultant number was added to the three

injuries and the one fatality that occurred in noncrash situations. A dollar value was estimated for these casualties. This value was adjusted to take into account the growth in estimated passenger enplanement over the next 10 years, and then discounted to obtain the present value of these benefits, which is $2.33 million. As a final adjustment, this figure was reduced to $1.96 million to account for the steadily reduced accident rate over the past 20 years that is expected to continue into the future due to other safety initiatives.

The estimated present value of these benefits is $1.96 million for the period 1990–1999. As there are no costs for this proposal, the FAA finds that this proposed rule would be cost beneficial.

Attitude Indicators

The FAA proposes to amend part 121 of the FAR to require an additional attitude indicator (for bank and pitch) to be installed on all turboprop airplanes and that this additional indicator operate from a power source independent of the airplane's normal electrical generating system. This recommendation came from two accidents over the last 10 years in which large turboprop cargo airplanes were flying in IFR conditions when they lost their critical flight instruments; in both cases, the flightcrew lost control of their airplane and crashed, killing all on board.

If adopted, this proposal should eliminate this type of accident. The FAA estimates that the approximate benefits of a cargo turboprop airplane avoiding this type of accident are $4.5 million and that the estimated benefits for passenger turboprop airplanes are $20.7 million and $28 million for small and large airplanes, respectively. Each of these numbers was multiplied by the annual probability that a turboprop airplane would have such an accident. The expected annual benefit was then projected out over a 10-year period and finally discounted to obtain the present value of benefits. The estimated present values of the benefits per turboprop airplane are:

Type of airplane	Present value—benefits($)
Cargo	15,674
30–40 seat passenger	72,100
40+ seat passenger	97,527

The installation costs for the third gyroscopic attitude indicator that would be required by this proposed rule would depend on the whether the airplane is used or new. The older large turboprop airplanes would need to be retrofitted with a third gyroscopic attitude indicator that must be connected to an independent power source. The newer turboprop airplanes have this type of an indicator already installed, but these indicators are not connected to an independent power source. All newly manufactured turboprop airplanes would be required to have such an indicator installed and connected to an independent power source. Factoring in the costs due to the weight penalty on each of these different types of airplanes, as well as the annual maintenance and inspection costs, projecting over a 10-year time horizon, and finally discounting these costs yields:

Type & age of airplane	Present value—costs($)
Old turboprop airplanes	7,482
New turboprop airplanes	2,932
Future turboprop airplanes	7,057

For each type of airplane, the benefits from this proposed rule exceed the costs. Accordingly, the FAA determines that this proposed rule is cost beneficial.

Passenger Information

The FAA has recognized three problem areas concerning the dissemination of passenger information. First, the regulations do not require that the lighted passenger information signs such as the "no smoking" and the "fasten seat belt" signs be turned on while the airplane is in a taxiing mode. Second, certain parts of the FAR do not require passenger compliance with these lighted passenger information signs, posted signs and placards, and crewmember safety-related instructions. Finally, some passenger briefing requirements lack specific information about safety belts, smoking aboard aircraft, or passenger compliance. As a result, the FAA proposes changes to the FAR to address these problems.

The FAA finds that there would be no costs to this proposed rule change. The intent of these proposed changes is to clarify the type of passenger-safety related information that needs to be disseminated and to codify the requirements concerning issuing such material. None of the proposed changes would involve any costs to any of the involved parties.

However, there are benefits to requiring passengers to comply with the fasten safety belt requirements. The FAA has found a number of incidents since 1970 where passengers and/or flight attendants have been injured during taxiing. Some of these incidents involved airplane collisions whereby passengers being belted in prevented more injuries from occurring, while other incidents involved non-belted passengers and flight attendants being injured while the aircraft was still moving on the ground. Thus, the FAA finds that this proposed rule is cost beneficial.

Passenger Service Equipment

Current FAA regulations do not require that passenger service carts, food and beverage trays, and movie screens be stowed during taxiing. Because of this, given an emergency evacuation situation during taxiing, passenger emergency egress would be impeded. Accordingly, the FAA proposes additions and changes to the FAR that would require an operator to secure all such apparatus before the aircraft begins taxiing.

This proposed rule change does not involve any additional costs to the air carrier or operator. However, there are potential benefits as a result of this proposed rule change (facilitating passenger evacuation during emergency situations). Therefore, the FAA finds that this proposed rule would be cost beneficial.

Shoulder Harnesses

At present, all crewmembers aboard U.S.-regulated airplanes that are equipped with shoulder harnesses are required to wear them at specific times and under specific conditions. The proposed rule would mandate the wearing of shoulder harnesses on all aircraft only if the crewmember's seat is equipped with a shoulder harness and the crewmember is able to perform required duties with the shoulder harness fastened. However, this proposed rule would not require the retrofitting of shoulder harnesses on those aircraft. Studies completed by the NTSB have shown that wearing shoulder harnesses has saved lives during accidents and that not wearing shoulder harnesses has resulted in fatalities and serious injuries during survivable accidents. Studies done by the FAA have shown positive net benefits from using shoulder harnesses.

The FAA finds that there would be no economic costs to this proposed rule. Given the economic benefits of lives saved and injuries prevented, the FAA finds that this proposed rule is cost beneficial.

Passenger Evacuation

While the current regulations governing part 121 operations call for the automatic deployable emergency

evacuation assisting means (such as exit doors and slides) to be armed during taxiing, takeoffs, and landings, there are no provisions for this equipment to be armed before taxiing. As a result, if an emergency occurs while the airplane is still at the gate or during pushback, there is no safe way for the passengers to leave the airplane except over the wing. This proposed rule would require the arming of such equipment before any airplane surface movement when passengers are on board.

The FAA has determined that there would be no additional economic costs to this proposed rule. All that the proposed rule would do is to require a specific action (the arming of this equipment) earlier than is currently required. However, given the possibility of emergency situations occurring before the assisting means have been armed that could require passenger evacuation, the FAA finds that this proposed rule would facilitate emergency evacuations and, therefore, would be cost beneficial.

Fire Extinguishers and PBE

The current FAA regulations governing the placement of fire extinguishers and protective breathing equipment are unclear. Accordingly, the FAA proposes to change the language of the applicable sections of part 121 to clarify these regulations. As the total quantity of this equipment would not change as a result of this proposed rule, there are no costs involved; the principal benefit would involve clarifying the location of such equipment. As a result, there are no costs or benefits that can be quantified and no economic consequences to ascertain.

Check Airmen Practical Tests

The rules under § 135.303 of the FAR, which require check airmen to pass oral and flight tests, are unclear about what constitutes these tests. Because there are other training and checking requirements in the FAR, the FAA has determined that this section of the FAR is obsolete and proposes to remove this section. Benefits would accrue to the airlines, which would no longer have to request exemptions from this section. The FAA, therefore, finds that this proposed rule is cost beneficial.

Safety Belts in Airships

Current FAA regulations exclude airships from the requirements of briefing passengers on how and when to fasten their safety belts and shoulder harnesses and on requiring each occupant to use them. The FAA proposes to revise the FAR by removing the exceptions to airships. However, this proposed rule would not require that airships be retrofitted with either seat belts or shoulder harnesses.

The FAA has determined that there are no costs to this proposed rule change. The proposed rule would mandate the wearing of such equipment on airships if such seat belts or shoulder harnesses are already installed in the airship. Thus, this proposed rule would not impose any additional costs. However, it is well known that seat belts and shoulder harnesses, whether they are used in automobiles, airplanes, or rotorcraft, have helped to save lives and prevent injuries. Similar benefits would be achieved by occupants of airships wearing seat belts or shoulder harnesses. Thus, given the potential economic benefits of lives saved and injuries prevented from using seat belts and shoulder harnesses, the FAA finds that this proposed rule would be cost beneficial.

International Trade Impact Assessment

These proposals would have little or no impact on international trade. Most of the proposed rules would impose little or no additional operating costs on part 121 certificate holders. Only one of the proposed rules would have any cost impact. That rule would affect only part 121 certificate holders that operate large turboprop airplanes and would require those part 121 operators who operate large turboprop airplanes to install a third gyroscopic attitude indicator. This proposed rule should not affect operators that provide international air carrier service since they operate jet airplanes for the most part and must already comply with this requirement. The part 121 operators that would be subject to this proposed rule provide mostly domestic, commuter and on-demand service and thus for the most part would not compete with foreign air carriers.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The proposal would impact entities regulated by Part 121. The FAA's criterion for "a substantial number" is a number that is not fewer than 11 and that is more than one third of the small entities subject to this rule. For air carriers, a small entity has been defined as one who owns, but does not necessarily operate, nine or fewer aircraft. The FAA's criteria for "a significant impact" are at least $3,700 per year for an unscheduled carrier, $51,800 per year for a scheduled carrier having airplanes with only 60 or fewer seats, and $92,700 per year for a scheduled carrier having an airplane with 61 or more seats.

Requiring part 121 scheduled operators of turboprop airplanes to install a third gyroscopic attitude indicator will impose, at most, an annualized cost of $1,236 per year per airplane. If a small part 121 scheduled operator has nine turboprop airplanes, these costs ($11,124) would not exceed either of the above two thresholds ($51,800 and $92,700) for scheduled carriers. If a small part 121 unscheduled operator had 3 or more turboprop airplanes, the costs of this proposed rule would exceed the $3,700 threshold per year for unscheduled carriers. However, this is the case for only two unscheduled operators. Thus a substantial number of small unscheduled operators are not affected by this proposal. The FAA, therefore, determines that the proposed amendments to part 121, if adopted, would not have a significant economic impact, positive or negative, on a substantial number of small entities.

Conclusion

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed these proposals to determine what impact they may have on small entities. The proposals included in this notice are only expected to affect a few small entities. Therefore, the FAA certifies that these proposals, if adopted, would not result in a significant economic impact, positive or negative, on a substantial number of small entities. In addition, the proposals, if adopted, are not likely to result in an annual effect on the economy of $100 million or more or in a major increase in costs for consumers or Federal, State, or local government agencies. Accordingly, it has been determined that this is not a major proposal under Executive Order 12291. In addition, these proposals, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas or foreign firms doing business in the United States. Finally, the FAA has determined that this action is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

A draft regulatory evaluation of this proposal, including a regulatory flexibility determination and international trade impact assessment, has been placed in the regulatory docket. A copy may be obtained by

contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects

14 CFR Part 91

Air carriers, Air Transportation, Aviation safety, Safety, Smoking.

14 CFR Part 121

Air carriers, Air Transportation, Aviation safety, Common carriers, Safety, Smoking, Transportation.

14 CFR Part 125

Air carriers, Air Transportation, Aviation safety, Safety, Smoking.

14 CFR Part 135

Air carriers, Air taxi, Air transportation, Aviation safety, Safety, Smoking.

The Proposed Rule

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 91, 121, 125, and 135 of the Federal Aviation Regulations (14 CFR parts 91, 121, 125, and 135) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

If adopted, the following proposals will be reflected in part 91 in effect as of the date of issuance of this notice of proposed rulemaking:

2. Section 91.7 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 91.7 Flight crewmembers at stations.

* * * * *

(b) Each required flight crewmember of a U.S.-registered civil aircraft shall, during takeoff and landing, keep his shoulder harness fastened while at his assigned duty station. This paragraph does not apply if—

* * * * *

3. Section 91.14 is amended by redesignating paragraph (b) as paragraph (c); by revising paragraphs (a)(1), (a)(2), and (a)(3) and newly redesignated paragraph (c); and by adding a new paragraph (b) to read as follows:

§ 91.14 Use of safety belts and shoulder harnesses.

(a) * * *

(1) No pilot may take off a U.S.-registered civil aircraft (except a free balloon that incorporates a basket or gondola or an airship type certificated before November 2, 1987) unless the pilot in command of that aircraft ensures that each person on board is briefed on how to fasten and unfasten that person's safety belt and, if installed, shoulder harness.

(2) No pilot may cause to be moved on the surface, take off, or land a U.S.-registered civil aircraft (except a free balloon that incorporates a basket or gondola or an airship type certificated before November 2, 1987) unless the pilot in command of that aircraft ensures that each person on board has been notified to fasten his safety belt and, if installed, his shoulder harness.

(3) Except as provided in this paragraph, each person on board a U.S.-registered civil aircraft (except a free balloon that incorporates a basket or gondola or an airship type certificated before November 2, 1987) must occupy an approved seat or berth with a safety belt and, if installed, a shoulder harness, properly secured about him during movement on the surface, takeoff, and landing. However, notwithstanding the preceding requirements of this paragraph, a person may:

(i) Be held by an adult who is occupying a seat or berth if that person has not reached his second birthday;

(ii) Use the floor of the aircraft as a seat, provided that the person is on board for the purpose of engaging in sport parachuting; or

(iii) Notwithstanding any other requirement of this chapter, occupy an approved child restraint system furnished by the operator or one of the persons described in paragraph (a)(3)(iii)(A) of this section provided that:

(A) The person is accompanied by a parent, guardian, or person (attendant) designated by the child's parent or guardian to attend to the safety of the child during the flight;

(B) The approved child restraint system, depending upon its date of manufacture, bears either one or two labels as follows:

(*1*) Seats manufactured between January 1, 1981, and February 25, 1985, must bear the lable: "This child restraint system conforms to all applicable Federal motor vehicle safety standards."

(*2*) Vest- and harness-type child restraint systems manufactured before February 26, 1985, are not approved. Seats manufactured on or after February 26, 1985, must bear two labels:

(*i*) "This child restraint system conforms to all applicable Federal motor vehicle safety standards"; and

(*ii*) "THIS RESTRAINT IS CERTIFIED FOR USE IN MOTOR VEHICLES AND AIRCRAFT"; and

(C) The operator complies with the following requirements:

(*1*) The restraint system must be properly secured to an approved seat or berth;

(*2*) The person must be properly secured in the restraint system and must not exceed the specified weight for the restraint system; and

(*3*) The restraint system bears the appropriate label(s).

(b) The operator may refuse to permit use of a restraint system that has an obvious defect and, in the operator's judgment, may not function properly.

(c) Unless otherwise stated, this section does not apply to operations conducted under part 121, 125, or 135 of this chapter. Paragraph (a)(3) of this section does not apply to persons subject to § 91.7.

4. Section 91.33 is amended by revising paragraph (b)(12) to read as follows:

§ 91.33 Powered civil aircraft with standard category U.S. airworthiness certificates; instrument and equipment requirements.

* * * * *

(b) * * *

(12) Except for airships type certificated before November 2, 1987, an approved safety belt with an approved metal-to-metal latching device for each occupant 2 years of age or older.

* * * * *

5. Section 91.197 is revised to read as follows:

§ 91.197 Passenger information

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane carrying passengers unless it is equipped with signs that are visible to passengers and cabin attendants to notify them when smoking is prohibited and when safety belts must be fastened. The signs must be so constructed that the crew can turn them on and off. They must be turned on during aircraft movement on the surface, for each takeoff, for each landing, and when otherwise considered to be necessary by the pilot in command.

(b) The pilot in command of an airplane that is not required, in accordance with applicable aircraft and equipment requirements of this chapter, to be equipped as provided in paragraph (a) of this section shall ensure that the passengers are orally notified each time

that it is necessary to fasten their safety belts and when smoking is prohibited.

(c) If passenger information signs are installed, no passenger or crewmember may smoke while any "no smoking" sign is lighted nor may any passenger or crewmember smoke in any lavatory.

(d) Each passenger required by § 91.14(a)(3) to occupy a seat or berth shall fasten his safety belt about him and keep it fastened while any seat belt sign is lighted.

(e) Each passenger shall comply with instructions given him by crewmembers regarding compliance with paragraphs (b), (c), and (d) of this section.

6. Section 91.199 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 91.199 Passenger briefing.

(a) * * *

(1) *Smoking:* each passenger shall be briefed on when, where, and under what conditions smoking is prohibited. This briefing shall include a statement, as appropriate, that the Federal Aviation Regulations require passenger compliance with lighted passenger information signs and no smoking placards, prohibit smoking in lavatories, and require compliance with crewmember instructions with regard to these items;

(2) Use of safety belts and shoulder harnesses: each passenger shall be briefed on when, where, and under what conditions it is necessary to have his safety belt and, if installed, his shoulder harness fastened about him. This briefing shall include a statement, as appropriate, that Federal Aviation Regulations require passenger compliance with the lighted passenger sign and/or crewmember instructions with regard to these items;

* * * * *

7. Section 91.217 is added to subpart D to read as follows:

§ 91.217 Stowage of food, beverage, and passenger service equipment during aircraft movement on the surface, takeoff, and landing.

(a) No operator may move an aircraft on the surface, take off, or land an aircraft when any food, beverage, or tableware furnished by the operator is located at any passenger seat.

(b) No operator may move an aircraft on the surface, take off, or land an aircraft unless each passenger's food and beverage tray is secured in its stowed position.

(c) No operator may permit an aircraft to move on the surface, take off, or land unless each passenger serving cart is secured in its stowed position.

(d) No operator may permit an aircraft to move on the surface, take off, or land unless each movie screen that extends into an aisle is stowed.

(e) Each passenger shall comply with instructions given by a crewmember with regard to compliance with this section.

If adopted, the following proposals will be reflected in new part 91 effective on August 18, 1990:

8. Section 91.105 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 91.105 Flight crewmembers at stations.

* * * * *

(b) Each required flight crewmember of a U.S.-registered civil aircraft shall, during takeoff and landing, keep his shoulder harness fastened while at his assigned duty station. This paragraph does not apply if—

* * * * *

9. Section 91.107 is revised to read as follows:

§ 91.107 Use of safety belts and shoulder harnesses.

(a) Unless otherwise authorized by the Administrator—

(1) No pilot may take off a U.S.-registered civil aircraft (except a free balloon that incorporates a basket or gondola or an airship type certificated before November 2, 1987) unless the pilot in command of that aircraft ensures that each person on board is briefed on how to fasten and unfasten that person's safety belt and, if installed, shoulder harness.

(2) No pilot may cause to be moved on the surface, take off, or land a U.S.-registered civil aircraft (except a free balloon that incorporates a basket or gondola or an airship type certificated before November 2, 1987) unless the pilot in command of that aircraft ensures that each person on board has been notified to fasten his safety belt and, if installed, his shoulder harness.

(3) Except as provided in this paragraph, each person on board a U.S.-registered aircraft (except a free balloon that incorporates a basket or gondola or an airship type certificated before November 2, 1987) must occupy an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about him during movement on the surface, takeoff, and landing. However, notwithstanding the preceding requirements of this paragraph, a person may:

(i) Be held by an adult who is occupying a seat or berth if that person has not reached his second birthday;

(ii) Use the floor of the aircraft as a seat, provided that the person is on board for the purpose of engaging in sport parachuting; or

(iii) Notwithstanding any other requirement of this chapter, occupy an approved child restraint system furnished by the operator or one of the persons described in paragraph (a)(3)(iii)(A) of this section provided that:

(A) The person is accompanied by a parent, guardian, or person (attendant) designated by the child's parent or guardian to attend to the safety of the child during the flight;

(B) The approved child restraint system, depending upon its date of manufacture, bears either one or two labels as follows:

(*1*) Seats manufactured between January 1, 1981, and February 25, 1985, must bear the label: "This child restraint system conforms to all applicable Federal motor vehicle safety standards."

(*2*) Vest- and harness-type child restraint systems manufactured before February 26, 1985, are not approved. Seats manufactured on or after February 26, 1985, must bear two labels:

(*i*) "This child restraint system conforms to all applicable Federal motor vehicle safety standards"; and

(*ii*) "THIS RESTRAINT IS CERTIFIED FOR USE IN MOTOR VEHICLES AND AIRCRAFT"; and

(C) The operator complies with the following requirements:

(*1*) The restraint system must be properly secured to an approved seat or berth;

(*2*) The person must be properly secured in the restraint system and must not exceed the specified weight limit for the restraint system; and

(*3*) The restraint system bears the appropriate label(s).

(b) The operator may refuse to permit use of a restraint system that has an obvious defect and, in the operator's judgment, may not function properly.

(c) Unless otherwise stated, this section does not apply to operations conducted under part 121, 125, or 135 of this chapter. Paragraph (a)(3) of this section does not apply to persons subject to § 91.105.

10. Section 91.205 is amended by revising paragraph (b)(12) to read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

* * * * *

(b) * * *

(12) An approved safety belt with an approved metal-to-metal latching device

for each occupant 2 years of age or older.

* * * * *

11. Section 91.517 is revised to read as follows:

§ 91.517 Passenger information.

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane carrying passengers unless it is equipped with signs that are visible to passengers and cabin attendants to notify them when smoking is prohibited and when safety belts must be fastened. The signs must be so constructed that the crew can turn them on and off. They must be turned on during aircraft movement on the surface, for each takeoff, for each landing, and when otherwise considered to be necessary by the pilot in command.

(b) The pilot in command of an airplane that is not required, in accordance with applicable aircraft and equipment requirements of this chapter, to be equipped as provided in paragraph (a) of this section shall ensure that the passengers are orally notified each time that it is necessary to fasten their safety belts and when smoking is prohibited.

(c) If passenger information signs are installed, no passenger or crewmember may smoke while any "no smoking" sign is lighted nor may any passenger or crewmember smoke in any lavatory.

(d) Each passenger required by § 91.107(a)(3) to occupy a seat or berth shall fasten his safety belt about him and keep it fastened while any seat belt sign is lighted.

(e) Each passengr shall comply with instructions given him by crewmembers regarding compliance with paragraphs (b), (c), and (d) of this section.

12. Section 91.519 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 91.519 Passenger briefing.

(a) * * *

(1) Smoking: Each passenger shall be briefed on when, where, and under what conditions smoking is prohibit. This briefing shall include a statement, as appropriate, that the Federal Aviation Regulations require passenger compliance with lighted passenger information signs and no smoking placards, prohibited smoking in lavatories, and required compliance with crewmember instructions with regard to these items;

(2) Use of safety belts and shoulder harnesses: Each passenger shall be briefed on when, where, and under what conditions it is necessary to have his safety belt and, if installed, his shoulder harness fastened about him. This briefing shall include a statement, as appropriate, that Federal Aviation Regulations require passenger compliance with the lighted passenger sign and/or crewmember instructions with regard to these items;

* * * * *

13. Section 91.535 is added to subpart F to read as follows:

§ 91.535 Stowage of food, beverage, and passenger service equipment during aircraft movement on the surface, takeoff, and landing.

(a) No operator may move an aircraft on the surface, take off, or land an aircraft when any food, beverage, or tableware furnished by the operator is located at any passenger seat.

(b) No operator may move an aircraft on the surface, take off, or land an aircraft unless each passenger's food and beverage tray is secured in its stowed position.

(c) No operator may permit an aircraft to move on the surface, take off, or land unless each passenger serving cart is secured in its stowed position.

(d) No operator may permit an aircraft to move on the surface, take off, or land unless each movie screen that extends into the aisle is stowed.

(e) Each passenger shall comply with instructions given by a crewmember with regard to compliance with this section.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS, AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

14. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12,. 1983).

15. Section 121.305 is amended by revising the introductory text of paragraph (j) to read as follows:

§ 121.305 Flight and navigational equipment.

* * * * *

(j) After (date 2 years after effective date) on large airplanes other than reciprocating-engine-powered airplanes, in addition to two gyroscopic bank and pitch indicators (artificial horizons) for use at the pilot stations, a third such instrument that—

* * * * *

16. Section 121.309 is amended by revising the introductory text of paragraph (c) and paragraph (c)(2); by redesignating paragraphs (c)(3), (c)(4), and (c)(5) as (c)(4), (c)(5), and (c)(7), respectively; by revising newly redesignated paragraphs (c)(4), (c)(5), and (c)(7); and by adding new paragraphs (c)(3) and (c)(6) to read as follows:

§ 121.309 Emergency equipment.

* * * * *

(c) Hand fire extinguishers for crew, passenger, cargo, and galley compartments. Hand fire extinguishers of an approved type must be provided for use in crew, passenger, cargo, and galley compartments in accordance with the following:

* * * * *

(2) *Cargo compartments.* At least one hand fire extinguisher must be provided and conveniently located for use in each class E cargo compartment that is accessible to crewmembers during flight.

(3) *Galley compartments.* At least one hand fire extinguisher must be conveniently located for use in each galley located in a compartment other than a passenger, cargo, or crew compartment.

(4) *Flightcrew compartment.* At least one hand fire extinguisher must be conveniently located on the flight deck for use by the flightcrew.

(5) *Passenger compartments.* Hand fire extinguishers for use in passenger compartments must be conveniently located and, when two or more are required, uniformly distributed throughout each compartment. Hand fire extinguishers shall be provided in passenger compartments as follows:

(i) For airplanes having passenger seats accommodating more than 6 but fewer than 31 passengers, at least one.

(ii) For airplanes having passenger seats accommodating more than 30 but fewer than 61 passengers, at least two.

(iii) For airplanes having passenger seats accommodating more than 60 passengers, there must be at least the following number of hand fire extinguishers:

MINIMUM NUMBER OF HAND FIRE EXTINGUISHERS

Passenger seating accommodations	
61 through 200	3
201 through 300	4
301 through 400	5
401 through 500	6
501 through 600	7
601 or more	8

(6) Notwithstanding the requirement for uniform distribution of hand fire extinguishers as prescribed in paragraph (c)(5) of this section, for those cases where a galley is located in a passenger compartment, at least one hand fire

extinguisher must be conveniently located and easily accessible for use in the galley.

(7) At least two of the required hand fire extinguishers installed in passenger-carrying airplanes must contain Halon 1211 (bromochlorofluoromethane) or equivalent as the extinguishing agent.

* * * * *

17. Section 121.311 is amended by revising paragraph (b); by redesignating paragraphs (c) through (h) as (e) through (j), respectively; by removing the words "After September 30, 1969, each" from newly redesignated paragraph (e) and inserting the word "Each" in their place; and by adding new paragraphs (c) and (d) to read as follows:

§ 121.311 Seats, safety belts, and shoulder harnesses.

* * * * *

(b) Except as provided in this paragraph, each person on board an airplane operated under this part shall occupy an approved seat or berth with a separate safety belt properly secured about him during movement on the surface, takeoff, and landing. A safety belt provided for the occupant of a seat may not be used by more than one person who has reached his second birthday. Notwithstanding the preceding requirements, a person may:

(1) Be held by an adult who is occupying an approved seat or berth if that person has not reached his second birthday; or

(2) Notwithstanding any other requirement of this chapter, occupy an approved child restraint system furnished by the certificate holder or one of the persons described in paragraph (b)(2)(i) of this section, provided:

(i) The person is accompanied by a parent, guardian, or person (attendant) designated by the child's parent or guardian to attend to the safety of the child during the flight;

(ii) The approved child restraint system, depending upon its date of manufacture, bears either one or two labels as follows:

(A) Seats manufactured between January 1, 1981, and February 25, 1985, must bear the label: "This child restraint system conforms to all applicable Federal motor vehicle safety standards."

(B) Vest- and harness-type child restraint systems manufactured before February 26, 1985, are not approved. Seats manufactured on or after February 26, 1985, must bear two labels:

(*1*) "This child restraint system conforms to all applicable Federal motor vehicle safety standards"; and

(*2*) "THIS RESTRAINT IS CERTIFIED FOR USE IN MOTOR VEHICLES AND AIRCRAFT"; and

(iii) The certificate holder complies with the following requirements:

(A) The restraint system must be properly secured to an approved seat or berth;

(B) The person must be properly secured in the restraint system and must not exceed the specified weight limit for the restraint system; and

(C) The restraint system bears the appropriate label(s).

(c) Except as provided in paragraph (d) of this section, no certificate holder may prohibit a child, if requested by the child's parent, guardian, or designated attendant, from occupying a child restraint system furnished by the child's parent, guardian, or designated attendant, provided the child holds a ticket for an approved seat or berth, or such seat or berth is otherwise made available by the certificate holder for the child's use, and the requirements contained in paragraphs (b)(2)(i) through (b)(2)(iii) of this section are met. This section does not prohibit the certificate holder from providing child restraint systems or, consistent with safe operating practices, determine the most appropriate passenger seat location for the child restraint system.

(d) The certificate holder may refuse to permit use of a restraint system that has an obvious defect and, in the certificate holder's judgment, may not function properly.

* * * * *

18. Section 121.317 is amended by removing the words "After December 31, 1988, no" from paragraph (e) and inserting the word "No" in their place; by redesignating paragraph (i) as (j); by revising paragraphs (b), (c)(2), (f), and (g); and by adding new paragraph (i) to read as follows:

§ 121.317 Passenger information.

* * * * *

(b) The seat belt sign shall be turned on during any movement on the surface, for each takeoff, for each landing, and at any other time considered necessary by the pilot in command.

(c) * * *

(2) On flight segments other than those described in paragraph (c)(1) of this section, during any movement on the surface, for each takeoff, for each landing, and at any other time considered necessary by the pilot in command.

* * * * *

(f) Each passenger required by § 121.311(b) to occupy a seat or berth shall fasten his safety belt about him and keep it fastened while the seat belt sign is lighted.

(g) No person may smoke while a no smoking sign is lighted, except that the pilot in command may authorize smoking on the flight deck except during airplane movement on the surface, takeoff, or landing.

* * * * *

(i) Each passenger shall comply with instructions given him by crewmembers regarding compliance with paragraphs (f), (g), and (h) of this section.

* * * * *

19. Section 121.337 is amended by revising paragraph (b)(9)(ii) to read as follows:

§ 121.337 Protective breathing equipment.

* * * * *

(b) * * *

(9) * * *

(ii) One PBE is required for each hand fire extinguisher located for use in a galley other than a galley located in a passenger, cargo, or crew compartment.

20. Section 121.570 is added to subpart T to read as follows:

§ 121.570 Passenger evacuation capability.

(a) No person may cause an airplane carrying passengers to be moved on the surface, take off, or land unless each automatically deployable emergency evacuation assisting means, installed pursuant to § 121.310(a), is armed.

(b) Each certificate holder shall ensure that, at all times passengers are on board prior to airplane movement on the surface, at least one floor-level exit provides for the egress of passengers through normal or emergency means.

21. Section 121.571 is amended by revising paragraphs (a)(1)(i) and (a)(1)(iii) to read as follows:

§ 121.571 Briefing passengers before takeoff.

(a) * * *

(1) * * *

(i) Smoking. Each passenger shall be briefed on when, where, and under what conditions smoking is prohibited (including, but not limited to, the pertinent requirements of Part 252 of this title). This briefing shall include a statement that the Federal Aviation Regulations require passenger compliance with the lighted passenger information signs, posted placards, areas designated for safety purposes as no smoking areas, and crewmember instructions with regard to these items. The briefing shall also include a statement that Federal law prohibits tampering with, disabling, or destroying

any smoke detector in an airplane lavatory.

* * * * *

(iii) The use of safety belts, including instructions on how to fasten and unfasten the safety belts. Each passenger shall be briefed on when, where, and under what conditions the safety belt must be fastened about that passenger. This briefing shall include a statement that the Federal Aviation Regulations require passengers compliance with lighted passenger information signs and crewmember instructions concerning the use of safety belts.

* * * * *

22. Section 121.577 is revised to read as follows:

§ 121.577 Stowage of food, beverage, and passenger service equipment during airplane movement on the surface, takeoff, and landing.

(a) No certificate holder may move an airplane on the surface, take off, or land an airplane when any food, beverage, or tableware furnished by the certificate holder is located at any passenger seat.

(b) No certificate holder may move an airplane on the surface, take off, or land an airplane unless each passenger's food and beverage tray is secured in its stowed position.

(c) No certificate holder may permit an airplane to move on the surface, take off, or land unless each passenger serving cart is secured in its stowed position.

(d) No certificate holder may permit an airplane to move on the surface, take off, or land unless each movie screen that extends into an aisle is stowed.

(e) Each passenger shall comply with instructions given by a crewmember with regard to compliance with this section.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

23. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430 and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

24. Section 125.211 is amended by revising paragraph (b); by redesignating paragraphs (c) through (e) as (e) through (g), respectively; and by adding new paragraphs (c) and (d) to read as follows:

§ 121.211 Seats and safety belts.

* * * * *

(b) Except as provided in paragraph (b)(1) and (2) of this section, each person on board an airplane operated under this part shall occupy an approved seat or berth with a separate safety belt properly secured about him during movement on the surface, takeoff, and landing. A safety belt provided for the occupant of a seat may not be used for more than one person who has reached his second birthday. Notwithstanding the preceding requirements, a person may:

(1) Be held by an adult who is occupying a seat or berth if that person has not reached his second birthday; or

(2) Notwithstanding any other requirement of this chapter, occupy an approved child restraint system furnished by the certificate holder or one of the persons described in paragraph (b)(2)(i) of this section, provided:

(i) The person is accompanied by a parent, guardian, or person (attendant) designated by the child's parent or guardian to attend to the safety of the child during the flight;

(ii) The approved child restraint system, depending upon its date of manufacture, bears either one or two labels as follows:

(A) Seats manufactured between January 1, 1981, and February 25, 1985, must bear the label: "This child restraint system conforms to all applicable Federal motor vehicle safety standards."

(B) Vest- and harness-type child restraint systems manufactured before February 26, 1985, are not approved. Seats manufactured on or after February 26, 1985, must bear two labels:

(*1*) "This child restraint system conforms to all applicable Federal motor vehicle safety standards"; and

(*2*) "THIS RESTRAINT IS CERTIFIED FOR USE IN MOTOR VEHICLES AND AIRCRAFT"; and

(iii) The certificate holder complies with the following requirements:

(A) The restraint system must be properly secured to an approved seat or berth;

(B) The person must be properly secured in the restraint system and must not exceed the specified weight limit for the restraint system; and

(C) The restraint system bears the appropriate label(s).

(c) Except as provided in paragraph (d) of this section, no certificate holder may prohibit a child, if requested by the child's parent, guardian, or designated attendant from occupying a child restraint system furnished by the child's parent, guardian, or designated attendant, provided the child holds an authorization for an approved seat or berth and the requirements contained in paragraphs (b)(2)(i) through (b)(2)(iii) of this section are met. This section does not prohibit the certificate holder from providing child restraint systems or, consistent with safe operating practices, determine the most appropriate passenger seat location for the child restraint system.

(d) The certificate holder may refuse to permit use of a restraint system that has an obvious defect and, in the certificate holder's judgment, may not function properly.

* * * * *

25. Section 125.217 is revised to read as follows:

§ 125.217 Passenger information.

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane carrying passengers unless it is equipped with signs that meet the requirements of § 25.791 of this chapter and that are visible to passengers and cabin attendants to notify them when smoking is prohibited and when safety belts must be fastened. The signs must be so constructed that the crew can turn them on and off. They must be turned on during aircraft movement on the surface, for each takeoff, for each landing, and when otherwise considered to be necessary by the pilot in command.

(b) No passenger or crewmember may smoke while any "no smoking" sign is lighted nor may any passenger or crewmember smoke in any lavatory.

(c) Each passenger required by § 125.211(b) to occupy a seat or berth shall fasten his safety belt about him and keep it fastened while any seat belt sign is lighted.

(d) Each passenger shall comply with instructions given him by crewmembers regarding compliance with paragraphs (b) and (c) of this section.

26. Section 125.327 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 125.327 Briefing of passengers before flight.

(a) * * *

(1) Smoking: each passenger shall be briefed on when, where, and under what conditions smoking is prohibited. This briefing shall include a statement that the Federal Aviation Regulations require passenger compliance with the lighted passenger information signs, posted placards, areas designated for safety purposes as no smoking areas, and crewmember instructions with regard to these items.

(2) The use of safety belts, including instructions on how to fasten and unfasten the safety belts. Each

passenger shall be briefed on when, where, and under what conditions the safety belt must be fastened about him. This briefing shall include a statement that the Federal Aviation Regulations require passenger compliance with lighted passenger information signs and crewmember instructions concerning the use of safety belts.

* * * * *

27. Section 125.333 is added to subpart J to read as follows:

§ 125.333 Stowage of food, beverage, and passenger service equipment during airplane movement on the surface, takeoff, and landing.

(a) No certificate holder may move an airplane on the surface, take off, or land when any food, beverage, or tableware furnished by the certificate holder is located at any passenger seat.

(b) No certificate holder may move an airplane on the surface, take off, or land an airplane unless each passenger's food and beverage tray is secured in its stowed position.

(c) No certificate holder may permit an airplane to move on the surface, take off, or land unless each passenger serving cart is secured in its stowed position.

(d) Each passenger shall comply with instructions given by a crewmember with regard to compliance with this section.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

28. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

29. Section 135.117 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 135.117 Briefing of passengers before flight.

(a) * * *

(1) Smoking. Each passenger shall be briefed on when, where, and under what conditions smoking is prohibited (including, but not limited to, any applicable requirements of part 252 of this title). This briefing shall include a statement that the Federal Aviation Regulations require passenger compliance with the lighted passenger information signs (if such signs are required), posted placards, areas designated for safety purposes as no smoking areas, and crewmember instructions with regard to these items. The briefing shall also include a statement (if the aircraft is equipped with a lavatory) that Federal law prohibits tampering with, disabling, or destroying any smoke detector installed in an aircraft lavatory.

(2) The use of safety belts, including instructions on how to fasten and unfasten the safety belts. Each passenger shall be briefed on when, where, and under what conditions the safety belt must be fastened about that passenger. This briefing shall include a statement that the Federal Aviation Regulations require passenger compliance with lighted passenger information signs and crewmember instructions concerning the use of safety belts.

30. Section 135.122 is added to subpart B to read as follows:

§ 135.122 Stowage of food, beverage, and passenger service equipment during aircraft movement on the surface, takeoff, and landing.

(a) No certificate holder may move an aircraft on the surface, take off, or land an aircraft when any food, beverage, or tableware furnished by the certificate holder is located at any passenger seat.

(b) No certificate holder may move an aircraft on the surface, take off, or land an aircraft unless each passenger's food and beverage tray is secured in its stowed position.

(c) No certificate holder may permit an aircraft to move on the surface, take off, or land unless each passenger serving cart is secured in its stowed position.

(d) Each passenger shall comply with instructions given by a crewmember with regard to compliance with this section.

31. Section 135.127 is amended by revising paragraphs (a)(2) and (b) and by adding new paragraphs (f) and (g) to read as follows:

§ 135.127 Passenger information.

(a) * * *

(2) On flight segments other than those described in paragraph (a)(1) of this section, during any movement of the aircraft on the surface, for each takeoff or landing and at any other time considered necessary by the pilot in command.

(b) No person may smoke while a no smoking sign is lighted, except that the pilot in command may authorize smoking on the flight deck (if it is physically separated from the passenger compartment) except during any movement of an aircraft on the surface, takeoff, and landing.

* * * * *

(f) The passenger information requirements prescribed in § 91.197(b) and (d) of this chapter are in addition to the requirements prescribed in this section.

(g) Each passenger shall comply with instructions given him by crewmembers regarding compliance with paragraphs (b), (c), and (f) of this section.

32. Section 135.128 is added to subpart B to read as follows:

§ 135.128 Child restraint systems.

(a) Except as provided in this paragraph, each person on board an aircraft operated under this part shall occupy an approved seat or berth with a separate safety belt properly secured about him during movement on the surface, takeoff, and landing. A safety belt provided for the occupant of a seat may not be used by more than one person who has reached his second birthday. Notwithstanding the preceding requirements, a person may:

(1) Be held by an adult who is occupying an approved seat or berth if that person has not reached his second birthday; or

(2) Notwithstanding any other requirement of this chapter, occupy an approved child restraint system furnished by the certificate holder or one of the persons described in paragraph (b)(2)(i) of this section, provided:

(i) The person is accompanied by a parent, guardian, or person (attendant) designated by the child's parent or guardian to attend to the safety of the child during the flight;

(ii) The approved child restraint system, depending upon its date of manufacture, bears either one or two labels as follows:

(A) Seats manufactured between January 1, 1981, and February 25, 1985, must bear the label: "This child restraint system conforms to all applicable Federal motor vehicle safety standards."

(B) Vest- and harness-type child restraint systems manufactured before February 26, 1985, are not approved. Seats manufactured on or after February 26, 1985, must bear two labels:

(*1*) "This child restraint system conforms to all applicable Federal motor vehicle safety standards"; and

(*2*) "THIS RESTRAINT IS CERTIFIED FOR USE IN MOTOR VEHICLES AND AIRCRAFT"; AND

(iii) The certificate holder complies with the following requirements:

(A) The restraint system must be properly secured to an approved seat or berth;

(B) The person must be properly secured in the restraint system and must not exceed the specified weight limit for the restraint system; and

(C) The restraint system bears the appropriate label(s).

(b) Except as provided in paragraph (c) of this section, no certificate holder may prohibit a child, if requested by the child's parent, guardian, or designated attendant from occupying a child restraint system furnished by the child's parent, guardian, or designated attendant, provided the child holds a ticket for an approved seat or berth, or such seat or berth is otherwise made available by the certificate holder for the child's use, and the requirements contained in paragraphs (a)(2)(i) through (a)(2)(iii) of this section are met. This section does not prohibit the certificate holder from providing child restraint systems or, consistent with safe operating practices, determine the most appropriate passenger seat location for the child restraint system.

(c) The certificate holder may refuse to permit use of a restraint system that has an obvious defect and, in the certificate holder's judgment, may not function properly.

33. Section 135.177 is amended by revising paragraph (a)(3) to read as follows:

§ 135.177 Emergency equipment requirements for aircraft having a passenger seating configuration of more than 19 passengers.

(a) * * *

(3) Signs that are visible to all occupants to notify them when smoking is prohibited and when safety belts must be fastened. The signs must be constructed so that they can be turned on during any movement of the aircraft on the surface, for each takeoff, landing, and at other times considered necessary by the pilot in command. No smoking signs shall be turned on when required by § 135.127.

§ 135.303 [Removed]

34. Section 135.303 is removed.

Issued in Washington, DC, on February 22, 1990.

W. Michael Sacrey,

Acting Director, Flight Standards Service.

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Technical Assistance in Support of Public-Private Partnerships for Low- and Moderate-Income Housing in Community Development Block Grant Communities (CDBG): Notice of Fund Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development, HUD

[Docket No. N-90-3012; FR-2767-N-01]

Technical Assistance in Support of Public-Private Partnerships for Low- and Moderate-Income Housing in Community Development Block Grant Communities (CDBG)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: The Department of Housing and Urban Development is seeking organizations interested in providing technical assistance aimed at enhancing the capacity of CDBG entitlement communities and the non-profit sector to enter into effective public-private partnerships to address the low- and moderate-income housing needs outlined in communities' Housing Assistance Plans (HAPs).

FOR FURTHER INFORMATION CONTACT: Chris Newman or Aliceann Nolte, Program Support Division, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755-7662.

SUPPLEMENTARY INFORMATION: This document invites organizations to contact the Department to express interest in entering into cooperative agreements to enhance the capacity of Community Development Block Grant entitlement communities and the non-profit sector to enter into effective public-private partnerships to address low- and moderate-income housing needs.

Both rental and ownership needs and options should be considered. The assistance should also address all facets of non-profit and community activities, including the strategic planning process, the capacity of the non-profits, organizational and management training and continuation of successful strategies and processes into the future. For-profit organizations may be prime contractors or subcontractors. If selected as the prime contractor, such organizations will not receive any contractor's fee. One to five providers will be selected for a national multi-site effort. HUD foresees an ultimate level of effort of 60 person years by the cooperating party(ies), with initial available funding at the level of 40 person years.

More detailed information for providers will be contained in the solicitation that will be available at the address below.

The following factors will be considered by the Department in evaluating applications received in response ot this RFCAA. Each application must contain sufficient technical information to be reviewed for its technical merit. The score of each factor will be based on the qualitative and quantitative aspects demonstrated in each area of the response. The factors and corresponding weights are as follows (100 total points):

1. *The probable effectiveness of the application in meeting the needs of localities and accomplishing overall project objectives (25 points).*

a. The extent to which the proposer clearly demonstrates an understanding and knowledge of the low- and moderate-income housing needs of communities, including the important issues influencing a community's ability to maintain and expand the supply of affordable low- and moderate-income housing, including low-income housing tax credits, mortgage revenue bonds, strategic community-wide planning, public-private partnerships, community and neighborhood-based nonprofit organizations, role of state and local government, role of CDBG program. (10 points)

b. The extent to which the proposer demonstrates an understanding and knowledge of applicable laws and regulations relating to implementation of Housing Assistance Plans (HAPs) as required by Title I of the Housing and Community Development Act of 1974, as amended (5 points);

c. The extent to which the application demonstrates a clear understanding of the project's objectives and is specific in relating proposed approaches to objectives (10 points).

2. *Soundness of approach based on the extent to which applications identify techniques or systems that can significantly impact on the key problem(s) identified. (25 points)*

a. The extent to which the application provides a technically sound and cost effective plan for designing, organizing and carrying out the provider's chosen approaches (4 points).

b. The feasibility and appropriateness of the proposed approaches to the objective of increasing the capacity of communities and nonprofits to produce and expand the supply of affordable housing for low- and moderate-income families (7 points).

c. The extent to which the application demonstrates an effective approach for developing public-private partnerships able to maintain and increase the supply of affordable low- and moderate-income housing (7 points).

d. The extent to which the application demonstrates an innovative approach for developing public-private partnerships able to maintain and increase the supply of affordable low- and moderate-income housing (7 points).

3. *Methodology for transfer of successful technical assistance techniques to other potential assistance providers (10 points).* The extent to which the proposal demonstrates:

a. A feasible plan for collecting, analyzing and presenting data and other information gathered during the project to identify techniques, approaches and problems concerning the maintenance and expansion of the supply of affordable low- and moderate-income housing (5 points).

b. A feasible plan for training staff and boards of public-private partnerships, non-profits and community staffs in issues affecting the supply of affordable housing, including but not limited to: systems for the organization, management and delivery of low- and moderate-income housing; project feasibility (market, site, participants, budget, design); identifying and securing financing, involvement of community-wide and neighborhood non-profits (5 points).

4. *Organizational and management plan reflecting a rational project management system (15 points).*

a. Clear delineation in the application of staff responsibilities within the project team and clear allocation of accountability for all work required (5 points).

b. Reasonableness and adequacy of proposed procedures for supervising and coordinating the performance of all team members (5 points).

c. A work plan which presents a clear and feasible schedule for conducting all project tasks (5 points).

5. *Application qualifications based on present and past relevant experience and the competence of key personnel assigned to the project (15 points).*

a. Organization (10 points)

—The organization's overall capabilities and recent experience with national, multi-site public-private partnerships to achieve increased or more affordable low- and moderate-income housing (5 points);

—Demonstrated commitment to provide high-quality technical assistance within the cooperative agreement time-frame and budget as evidenced by recent performance on similar activities (5 points).

b. Staffing (5 points).

—Project Director (3 points): the extent to which the proposed project director has prior relevant experience in managing national, multi-site projects, proven ability to manage the performance of complex, multi-site projects within time and budget limits, and understanding of the basic issues relating to increasing the capacity of the non-profit sector to enter into effective public-private partnerships to maintain and expand the supply of affordable low- and moderate-income housing.

—Project Staff (2 points): the extent to which the staff members proposed for this project have backgrounds suitable for the technical assistance effort based upon prior experience in projects of a comparable nature.

6. *Potential for assistance activities being sustained beyond the period of the cooperative agreement.* The extent to which the provider demonstrates that the technical assistance provided will result in the partnerships achieving (10 points):

a. Resources to continue providing low- and moderate-income housing in the future (4 points);

b. An organizational structure to continue providing low- and moderate-income housing in the future (3 points);

c. An approach or process to incorporate providing low- and moderate-income housing into an on-going program (3 points).

Solicitations will be available on or about March 1, 1990 at the following address: Office of Procurement and Contracts, Program Support Division (ACS–CN), Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5256, Washington, DC 20410. Please furnish two self-addressed mailing labels. No telephone requests for the solicitation will be accepted. Applications must be submitted as specified in the solicitation by 2 p.m. Eastern Standard Time on May 1, 1990. Selection criteria for CDBG entitlement communities to be provided technical assistance under these cooperative agreements will be published separately by HUD.

Other Matters

This announcement is categorically excluded under 24 CFR 50.20(b) from the environmental review requirements of the National Environmental Policy Act.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies and procedures contained in this document will not have substantial direct effects on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. As a result, this document is not subject to review under the Order. Specifically, the document solicits participation in an effort to provide technical assistance, and does not impinge upon the relationship between the Federal government and State and local governments.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this document does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Dated: February 15, 1990.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 90–4594 Filed 2–23–90; 8:45 am]

BILLING CODE 4210–29–M

federal register

Thursday,
March 1, 1990

Part IV

Department of Education

Research in Education of the Handicapped Program; Notice of Inviting Applications for New Award for Fiscal Year 1990

DEPARTMENT OF EDUCATION

[CFDA No.: 84.023]

Research in Education of the Handicapped Program; Notice Inviting Applications for New Award for Fiscal Year 1990

Purpose of program: To assist research and related purposes, and to conduct research, surveys, or demonstrations, relating to the education of infants, toddlers, children, and youth with handicaps.

Deadline for transmittal of applications: May 4, 1990

Applications available: March 15, 1990

Available funds: $225,000 per year

Estimated average size of awards: $225,000

Estimated number of awards: 1 cooperative agreement

Project period: up to 36 months

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions That Apply to Department Regulations, part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants); (b) the regulations for this program in 34 CFR part 324; and (c) the Funding Priority described below.

Background: On April 4, 1989, the Department published a final priority in the Federal Register titled "Research on General Education Science or Mathematics Curricula." It has been anticipated that two cooperative agreements under the priority would be funded: one addressing mathematics curricula and one addressing science curricula. However, only one award addressing mathematics curricula was made. The Department has decided to announce substantially the same priority as the one announced on April 4, 1989, but only for projects addressing science curricula. Non-substantive, clarifying changes were made for the purpose of assisting applicants in responding to this Notice.

Priority: The Secretary establishes the following priority for the Research in Education of the Handicapped program, CFDA No. 84.023. In accordance with the Education Department General Administrative Regulations (EDGFAR, 34 CFR 75.105(C)(3)), the Secretary will give an absolute preference under this program to applications that respond to the following priority; that is, the Secretary proposes to select for funding only those applications proposing projects that meet this priority.

Priority: Research on general education science curricula (CFDA 84.023D3)

The purpose of this priority is to support one 36-month cooperative agreement for a research project to analyze general education, kindergarten through grade eight, curricula in science, using a cross-grade (e.g., primary, elementary, and middle grades) perspective. The research will examine the compatibility of the scope, sequence, and methods of presentation (including rate, complexity, informational density, and approach for organizing and presenting content) with the learning characteristics and needs of students with handicapping conditions for whom the regular education curriculum is considered appropriate. In planning the research, the project must consider the kindergarten through grade eight curriculum in science as a whole, not just as a year-by-year treatment, so that assumptions about students' prior knowledge and skills as well as their need for acquisition, mastery, application of skills, and understanding of concepts can be examined. While focusing on the needs of children with disabilities, the project must consider current national initiatives in science, including those of professional associations and the Federal Government, to develop standards and new curricula for use in regular primary, elementary, and middle school grades.

The project must be organized to accomplish four major objectives: (1) analyses of curricular approaches; (2) analyses of instructional methods and materials; (3) development of guidelines; and (4) field tests of guidelines.

Objective 1. The project must analyze existing and potential alternative curriculum approaches to organizing the knowledge base in science. For example, alternative approaches might include teaching science through teaching facts, rules, and principles; through a process of discovering knowledge; or through describing the natural world. Another approach might be an interdisciplinary focus that attempts to integrate other disciplines with science using a thematic approach or focusing on a certain historical period.

Objective 2. Those alternative approaches for organizing science curricula will provide the starting point for analyzing alternative methods and materials for prioritizing, segmenting, and arranging science content to be covered in kindergarten through grade eight. These analyses must include examination of current curricula scope and sequence, textbooks, instructional technology, media, and supplementary materials. The alternative methods and materials for presenting science content for kindergarten through grade eight must be examined in relation to the learning characteristics of children with a variety of handicaps, particularly related to needs associated with acquisition, mastery, application of skills, and understanding of concepts.

Objective 3. Results of the analyses above will be used to develop decision making guidelines for determining the appropriateness of, establishing priorities for, and adapting or modifying, curriculum goals and objectives for children and youth with handicapping conditions. These guildlines must make explicit the factors to be considered in making these decisions. Further, the guidelines must be useful to publishers for revising instructional materials, to teachers for analyzing and prioritizing content for students, and to school district personnel who revise, evaluate, and adopt school building or district-wide curriculum and instructional materials.

Objective 4. The project must conduct several field tests to determine the usefulness of the guidelines. These field tests must determine: (1) the usefulness of the guidelines to publishers in developing new materials and in revising existing materials; (2) the extent to which the guidelines help teachers analyze and prioritize content for students; and (3) the utility of guidelines in improving school building or district-wide curriculum and instructional materials revision, evaluation, and adoption procedures. Part of the field testing must include obtaining informed judgments about the logic, design, and content of the guidelines from each of the target audiences above. For purposes (2) and (3), the investigators must also conduct field tests in at least four school districts to test the usefulness of the guidelines as implemented in typical settings (classrooms and districts).

For Applications or Information Contact: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3524), Washington, DC 20202. Telephone: Linda Glidewell (202) 732–1099.

Authority: 20 U.S.C. 1441–1444.

Dated: February 23, 1990.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90–4591 Filed 2–28–90; 8:45 am]

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federal register

Thursday
March 1. 1990

Part V

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Actions Under Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth six actions to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Office of Science Policy and Legislation, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: Today six actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. These six proposed actions were published for comment in the **Federal Register** of December 19, 1986 (51 FR 45650); December 30, 1988 (53 FR 53262); September 1, 1989 (54 FR 36698), January 4, 1990 (55 FR 393); January 22, 1990 (55 FR 2152), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meetings on February 2, 1987, January 30, 1989, October 6, 1989, and February 5, 1990.

I. Background Information and Decisions on Action Under the NIH Guidelines

A. Proposed Revision of Section III–A–2 of the NIH Guidelines

The RAC Working Group on Definitions at its meeting on December 5, 1986, passed the following motion with regard to the definition of recombinant DNA:

The working group agreed with the concept that certain types of recombinant DNA experiments which do not involve the introduction of foreign DNA need not be subjected to special regulation as "recombinant DNA." The working group were split as to whether they preferred dealing with this problem by changing the definition of recombinant DNA or by further modifications of other sections of the NIH Guidelines (e.g., those in III–A–2). Therefore, the working group presented the following two options for public comment and RAC consideration:

1. Change definition of recombinant DNA:

The first paragraph of section I–B would be revised to read as follows (new words bolded):

In the context of these Guidelines, recombinant DNA molecules are defined as either (i) molecules which are constructed outside living cells by joining foreign natural or foreign synthetic DNA segments to DNA molecules that can replicate in a living cell, or (ii) DNA molecules that result from the replication of those described in (i) above.

The following new footnote would be added at the word foreign:

Rearrangements involving the introduction of DNA from different organisms or different strains of an organism will be considered recombinant DNA. Deletions, single-base changes and rearrangements within a single genome will not involve the introduction of foreign DNA and therefore would not be considered recombinant DNA.

2. Modify section III–A–2 to read as follows:

III–A–2. Deliberate release into the environment of any organism containing recombinant DNA except those listed below. The term "deliberate release" is defined as a planned introduction of recombinant DNA-containing micro-organisms, plants, or animals into the environment.

a. Introductions conducted under conditions considered to be accepted scientific practices in which there is adequate evidence of biological and/or physical control of the recombinant DNA-containing organisms. The nature of such evidence is described in Appendices L, M, N, and O.

b. Deletion derivatives and single base changes not otherwise covered by the Guidelines.

c. Rearrangements and amplification within a single genome. Rearrangements involving the introduction of DNA from different strains of the same organism would not be covered by this exemption.

This proposal was published for comment in the **Federal Register** of December 19, 1986 (51 FR 45650).

The RAC considered this proposal at the February 2, 1987, meeting.

The RAC, by a vote of 11 in favor, 4 opposed, and 1 abstention, accepted the following motion:

III–A–2. Deliberate release into the environment of any organism containing recombinant DNA except those listed below. The term 'deliberate release' is defined as a planned introduction of recombinant DNA-Containing micro-organisms, plants, or animals into the environment.

III–A–2–a. Introductions conducted under conditions considered to be accepted scientific practices in which there is adequate evidence of biological and/or physical control of the recombinant DNA-containing organisms. The nature of such evidence is described in Appendices L, M, N, and O.

III–A–2–b. Deletion derivates and single base changes not otherwise covered by the Guidelines.

III–A–2–c. For extrachromosomal elements and microorganisms (including viruses), rearrangements and amplifications within a single genome. Rearrangements involving the introduction of DNA from different strains of the same species would not be covered by this exemption.

I accept this recommendation and Section III–A–2 has been modified accordingly.

B. Public Information Brochure—"Gene Therapy for Human Patients"

The Human Gene Therapy Subcommittee of the Recombinant DNA Advisory Committee has developed a document to be used in educating the nonscientific public about human gene therapy. The information brochure includes background material about the purposes and potential of research in gene therapy, about its supervision, and about why and how the public is involved.

The announcement of the review of this brochure was initially published in the **Federal Register** of December 30, 1988 (53 FR 53262), prior to a scheduled RAC meeting on January 30, 1989.

After minor revisions, the RAC voted to approve the following version as the final form of the document by a vote of 23 in favor, none opposed, and no abstentions:

Gene Therapy for Human Patients Information for the General Public

This brochure provides basic information for the nonscientific public about experiments intended to cure disease through transplantation of genes into the nonreproductive (somatic) cells of human patients. It includes background material about human gene therapy and its purposes and potential, about supervision of the research, and about why and how the public is involved.

While this brochure is intended primarily as educational material, in some instances it will be circulated by the National Institutes of Health together with the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects.

Gerard J. McGarrity, Ph.D., Chair, Recombinant DNA Advisory Committee,
LeRoy Walters, Ph.D., Chair, Human Gene Therapy Subcommittee

March 1990

PREFACE

As a result of recent advances in medical science, researchers believe that a gene can be transplanted into human beings who suffer from severe diseases. Such gene transplants may alleviate or perhaps even cure diseases for which no adequate treatment now exists.

The possible new treatment is called human gene therapy and is one of a series of emerging genetic techniques, commonly called genetic engineering, based on new knowledge about how genes work.

It is expected that researchers will soon request approval for a human gene therapy experiment. Many benefits are foreseen. However, because of the novelty of the field, concerns about the discriminatory and eugenic misuse of the techniques, and the possible effects on future generations from some types of human gene therapy, important ethical questions will also be raised.

This brochure is intended to provide basic information for the general public about the new technique and its significance. It was written at the request of the public representative of the Human Gene Therapy Subcommittee. Contributors to the writing and revision of this document are listed in part 5.

Anne Reed Witherby, Public Representative

CONTENTS

PART 1—DISEASES AND THEIR TREATMENT

The human body is made up of about fifty trillion cells. Inside each cell is information that tells the cell what to do and how to work. This information is contained in genes, which are made up of a chemical called DNA. Through small differences in the structure of the DNA, the information is coded and stored, just as different letters combine to form words which are then stored in books. All the many activities that a cell does start with reading part of the information that is stored in the DNA of the genes. There are approximately one hundred thousand genes in each cell of the human body. Although the genes are the same in every cell, each type of cell reads only certain genes. In this way a muscle cell, for instance, looks and works differently from a skin cell or a liver cell.

There are two major types of cells in the human body, *somatic* (non-reproductive) cells and *germ line* (reproductive) cells. Most cells in the body are somatic. Somatic cells provide all the body structures and perform all the functions except for passing genetic information on to the next generation. Germ cells include eggs in women and sperm in men. The genes in sperm and egg cells store information that will go to the next generation, to one's children. The genetic information in somatic cells is not passed on to the next generation.

If the DNA information of a particular gene contains mistakes, the gene may not function properly. Sometimes the malfunction will not be serious, but other times it will cause a severe genetic disease. Examples of some genetic diseases are cystic fibrosis, sickle cell anemia, and hemophilia. Hemophilia, for instance, is cuased by the malfunctioning of the gene that makes the factor that causes blood to clot. As more is learned about human genetics, it is becoming clear that diseases such as diabetes, cancer, heart disease, and some manic depressive illnesses also result in part from faulty DNA information.

For some genetic diseases, there are satisfactory therapies that do exist. Drugs, blood transfusions, changes in diet, or transplantation of body organs can often help to compensate for the incorrect information from the malfunctioning gene. For example, clotting factor can be administered to patients with hemophilia.

Human gene therapy is a possible alternative approach to the treatment of some genetic diseases. The basic idea behind gene therapy is to insert normal genes with correct information into the DNA of the cells that contain malfunctioning genes. Adding genes in this way is called gene insertion. The added genetic information would allow these cells to function properly and might reduce or eliminate the signs or symptoms of the disease. For example, instead of repeatedly treating a hemophiliac with clotting factor, one could insert the correct genetic information into his cells to allow those cells to make their own clotting factor.

It seems likely that human gene therapy will also be used to combat certain diseases that may not be genetic. For example, malignancies are usually treated with surgery, radiation and/or chemotherapy. For cancer patients who are not helped by these therapies, researchers are now planning to treat the patients' disease with genetically-altered white blood cells.

Scientists have developed methods for inserting genes into human somatic cells. The techniques for isolating human genes and making multiple copies of them in the laboratory are well established. Now scientists are studying how to insert those genes into cells and how to make those genes work properly once inside the cells. One method for inserting genes into cells is to link the genes with a virus that has been crippled and rendered harmless. As part of the modification, such a virus, sometimes called a vector or vehicle, has been deliberately altered so that it can carry genes into cells but cannot then escape to infect other cells. After the cells to be treated have been temporarily removed from a patient's body, the virus or vector is used to carry the desired gene into them. The final step will be to return the treated cells, which now contain the correct genetic information, to the patient's body. For example, bone marrow, liver cells, or white blood cells could be removed from the body of a patient, treated in the laboratory, and returned to the patient.

Whether bone marrow cells or some other type of human cells were used, the added genes would be inserted only into somatic (non-reproductive) cells and not into germ line (productive) cells. Therefore, newly inserted genes could not be passed to patients' children. The therapy would be called somatic cell gene therapy and would not attempt to affect the germ line cells, which carry genetic information to the next generation.

The best outcome of human gene therapy would be a single treatment that would correct enough cells to provide a permanent cure for the patient's disease. This kind of complete success is unlikely in the beginning stages of human gene therapy but will remain the long-term goal of research scientists working in this field.

PART 2—GOVERNMENTAL OVERSIGHT AND PUBLIC PARTICIPATION

Oversight of government-funded experiments involving gene therapy for human patients occurs at both the local and national levels.

At the local level, facilities at which experiments would take place are required to have two types of committees. First, hospitals and universities involved in experiments with human subjects are required to have Institutional Review Boards (IRB) to ensure that the research complies with Department of Health and Human Services (DHHS) regulations for protection of human subjects. Second, experiments that involve gene insertion must be approved in advance by an Institutional Biosafety Committee (IBC).

These local review boards provide an opportunity for the general public to become involved in the decisions made about research involving gene therapy for human patients. The DHHS regulations require that at least one nonscientist serve as a member of each IRB. Further, the NIH Guidelines for Research Involving Recombinant DNA Molecules encourage research facilities to open their IBC meetings to the public.

At the national level, the Director of the NIH must approve each human gene therapy proposal. In making this decision, the Director seeks advice from the Recombinant DNA Advisory Committee (RAC). The initial review of the proposal is performed by the RAC's Human Gene Therapy Subcommittee, which is guided by the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects, discussed later in this brochure.

The general public is represented on the RAC and the Human Gene Therapy Subcommittee, as well as on the local review boards. The membership of the RAC (25 people), and of the Human Gene Therapy

Subcommittee (15 people), includes scientists, physicians, lawyers, ethicists, and several laypeople.

The NIH Guidelines for Recombinant DNA Molecules require that notice of meetings of the NIH Recombinant DNA Advisory Committee (RAC) be published in the **Federal Register** at least 30 days prior to the meeting. Federal regulations require at least 15 days advance notice of all other meetings through the **Federal Register** publication (e.g., subcommittee meetings). All meetings are to be open to the press and the public, unless closed in accordance with 5 USC 552b.

The NIH has authority only over certain federally funded research. However, many private companies that do not receive federal support voluntarily submit proposals to NIH for review. In addition, the Food and Drug Administration (FDA), which has jurisdiction over drug and biological products intended for use in human patients, must also review and approve experiments involving gene therapy for human patients, whether the research is federally funded or not.

Since the 1970s, general interest in human gene therapy has increased both here and abroad, along with awareness of the need for oversight and regulation. In this country, in 1974, the Secretary, Department of Health, Education, and Welfare (now the DHHS), chartered the Recombinant DNA Advisory Committee (RAC) to develop recommendations for the regulation of recombinant DNA research. The Guidelines for Research Involving Recombinant DNA Molecules were published in 1976. In 1978, the Guidelines were revised, relaxing many of the requirements for recombinant DNA experiments.

In 1980, at the urging of the three major religious groups in this country, the President requested that the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research examine the topic of human genetic engineering. In November 1982, one of the Commission's eleven reports, Splicing Life; The Social and Ethical Issues of Genetic Engineering with Human Beings, was submitted to the President and Congress. A subcommittee of the United States House of Representatives held three days of hearings on the report. Congressional interest also resulted in a 1984 background paper entitled, Human Gene Therapy, produced by the Office of Technology Assessment. In response to one recommendation of the President's Commission, the NIH Recombinant DNA Advisory Committee formed a working group in 1984, to specialize in human gene therapy. This is now the Human Gene Therapy Subcommittee. In 1985, the White House Office of Science and Technology Policy created the Biotechnology Science Coordinating Committee (BSCC). The Committee includes federal officials representing the National Institutes of Health, the Environmental Protection Agency, the U.S. Department of Agriculture, the Food and Drug Administration, and the National Science Foundation. The BSCC provides a forum for discussion of biotechnology issues and an opportunity to make recommendations on the federal regulation of biotechnology.

Legislative interest continues to be expressed through activities of the Subcommittee on Science, Research and Technology of the House Committee on Science and Technology and the Office of Technology Assessment. In 1986, a Congressional Biomedical Ethics Board was formed to oversee research and developments in genetic engineering. This Board is composed of six Senators and six Representatives.

International interest in human gene therapy has resulted in a number of reports and recommendations submitted by foreign government committees. For example, in 1982, the Parliamentary Assembly of the Council of Europe issued a statement including proposals for oversight and recommendations for certain restrictions on human genetic engineering. (Other reports and statements are listed at the end of this brochure under Suggestions for Further Study.)

In summary, research on human gene therapy is being monitored at both the local and national levels, here and abroad. Members of the general public are represented and are encouraged to participate in the public discussion of this new area of biomedical research.

PART 3—NIH 'POINTS TO CONSIDER' FOR GENE THERAPY RESEARCHERS

In anticipation of the first request to perform a human gene therapy experiment, the Human Gene Therapy Subcommittee prepared a document called Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects. This document was approved by the NIH Recombinant DNA Advisory Committee and the Director of the NIH in 1986. The Points to Consider document provides guidance to physicians and scientists who are planning to submit proposals to the NIH for gene therapy treatment of patients. It describes the considerations that have been identified in the studies and hearings mentioned previously as the most important in evaluating this new mode of treatment.

In the Points to Consider, researchers are first asked:

What disease do you intend to treat with gene therapy?

Why do you consider this disease to be an appropriate candidate for treatment with this new method?

In answering these questions, the researcher will discuss the seriousness of the disease, any alternative therapies, and the possible advantages of gene therapy for at least some patients.

Another part of the 'Points to Consider' asks:

What laboratory studies have been done, with cells and live animals, that make researchers hopeful that gene therapy will help patients rather than harming them?

Here the researcher will provide the results of studies performed in his/her laboratory or in other laboratories around the world. Especially important will be studies demonstrating that gene therapy does not harm laboratory animals and in fact demonstrates that the desired biological effects occur.

Even if the preceding questions are satisfactorily answered, important questions about the proposed use of gene therapy in patients will remain. The "Points to Consider" ask the following four questions:

What are the probable benefits and harms of the proposed treatment, both to the patient and to others?

If there are several patients who need gene therapy but only one of them can be treated initially, how will selection be made in a way that treats all patients fairly?

How will patients—or, in the case of young children, the parents of patients—be properly informed about the possible benefits and risks of gene therapy?

What steps will be taken to protect the privacy of the patient and the patient's family, while at the same time informing the public about the results of gene therapy? In the Introduction to the "Points to Consider," reference is made to two possible undesirable or unintentional consequences of somatic cell gene therapy: Transmission of altered genes to a patient's offspring, and viral infection of persons who come in contact with the patient. The Subcommittee requests that researchers describe what actions will be taken to prevent either event from occurring.

The Points to Consider acknowledges the public concern about some aspects of human gene therapy. It reads: 'In recognition of the social concern that surrounds the general discussion of human gene therapy, the [Subcommittee] will continue to consider the possible long-range effects of applying knowledge gained from these and related experiments.' For the moment, the Subcommittee agrees with the conclusion in the Office of Technology Assessment's report Human Gene Therapy that:

Civic, religious, scientific, and medical groups have all accepted, in principle, the appropriateness of gene therapy of somatic cells in humans for specific genetic diseases. Somatic cell gene therapy is seen as an extension of present methods of therapy that might be preferable to other technologies.

While the RAC and its Subcommittee believe that gene therapy for non-reproductive, or somatic, cells holds promise for patients suffering from certain genetic and other diseases, they will seek to ensure that patients are not subjected to unreasonable risk of harm, excessive discomfort, or unwanted invasion of privacy and that they will receive special care, monitoring, and consideration. The public will be informed about every step that is taken with this new technique.

PART 4—SUGGESTIONS FOR FURTHER STUDY

There are several helpful books, articles, and a videotape on the subject of gene therapy. The following is a selection of materials oriented toward the lay reader.

READING MATERIAL

U.S. National Institutes of Health, Recombinant DNA Advsiory Committee, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects. Available from the Office o

Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892.

Guidelines for Research Involving Recombinant DNA Molecules, NIH, 1986. Available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892.

W. French Anderson, Prospects for Human Gene Therapy in the Born and Unborn Patient, *Clincal Obstetrics and Gynecology*, 29(3): 586–594; September 1986.

W. French Anderson and John C. Fletcher, Gene Therapy in Human Beings: When Is It Ethical to Begin? *New England Journal of Medicine* 202 (22): 1292–1297; November 27, 1980.

Council of Europe, Parliamentary Assembly, Recommendation 934 (1982) on Genetic Engineering, adopted by the Assembly January 26, 1982.

Institute of Medicine, National Academy of Sciences, and Eve K. Nichols, Human Gene Therapy (Cambridge, Mass.: Harvard University Press, 1988).

Jeff Lyon and Peter Gorner, Altered Fates—The Promise of Gene Therapy (Chicago, IL: Chicago Tribune Company, 1986). Available from the Office of Recombinant DNA Activities, National Institutes of Health, building 31, room 4B11, Bethesda, Maryland 20892.

Arno G. Motulsky, Impact of Genetic Manipulation on Society and Medicine, *Science* 219 (4581): 135–140; January 14, 1983.

National Council of the Churches of Christ in the United States of America. Genetic Science for Human Benefit. Adopted by the Governing Board, May 1986. Available from the Office of the General Secretary, National Council of Churches, 475 Riverside Drive, room 880, New York, NY 10115.

Maya Pines, The New Human Genetics: Human Gene Splicing Helps Researchers Fight Inherited Disease (Bethesda, MD: National Institute of General Medical Sciences, September 1984). Available from the National Institute of General Medical Sciences, National Institutes of Health, building 31, room 4A52, Bethesda, Maryland 20892.

Jeremy Rifkin, in collaboration with Nicanor Perlas, Algeny (New York, Viking, 1983).

U.S., President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Splicing Life: A Report on the Social and Ethical Issues of Genetic Engineering with Human Beings (Washington, DC: U.S. Government Printing Office, November 1982). Available from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402.

U.S., Congress, Office of Technology Assessment, Human Gene Therapy, Background Paper (Washington, DC: OTA, December 1984). Available from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402.

U.S., Congress, Office of Technology Assessment, Background Paper: Public Perceptions of Biotechnology (Washington, DC: OTA, May 1987), Chapter 8. Available from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402.

LeRoy Walters, The Ethics of Human Gene Therapy, *Nature* 320 (6059): 225–227; March 20, 1986.

World Council of Churches, Working Committee on Church and Society, Manipulating Life: Ethical Issues in Genetic Engineering, Geneva: Church and Society, World Council of Churches, 1982.

World Medical Association, Statement on Genetic Counseling and Genetic Engineering, 39th World Medical Assembly, Madrid, Spain, October 1987.

AUDIOVISUAL RESOURCE

The Genetic Gamble, a NOVA Program first aired on the Public Broadcasting System in 1985. Available as a videotape from Coronet-MTI Film and Video, 108 Wilmot Road, Deerfield, IL 60015, phone: (800) 621–2131. Rental cost $99; purchase price: $350.

PART 5—LIST OF CONTRIBUTORS

Recombinant DNA Advisory Committee

Human Gene Therapy Subcommittee

Anderson, W. French, M.D., Laboratory of Molecular Hematology, National Heart, Lung, & Blood Institute
Areen, Judith, J.D.,* Dean, Georgetown University Law Center
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Neiman, Paul E., M.D., Associate Director for Basic Sciences, Fred Hutchinson Cancer Research Center
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Rich, Robert F., Ph.D., Institute of Governmental and Public Affairs, University of Illinois
Varmus, Harold, M.D., Department of Microbiology, University of California, San Francisco
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I accept this document as education material on human gene therapy that will be distributed by NIH.

C. Proposal to Amend Appendix H of the NIH Guidelines.

The **Federal Register** of June 24, 1988 (53 FR 23775), contained a proposal by the Postal Service to ban the shipment of all etiologic agents, or materials believed to contain etiologic agents, as defined by the Department of Transportation and the Department of Health and Human Services regulations. Under Appendix H of the current NIH Guidelines for Research Involving Recombinant DNA Molecules of May 7, 1986 (52 FR 16976), this ban could apply to all shipments of recombinant molecules contained within an organism or virus, regardless of whether they are potentially hazardous to human health Such a ban could affect the terms and conditions under which commercial shippers would transport recombinant DNA products. The RAC recognized the potential significance of this issue and referred it to the Definitions Subcommittee of the RAC, which met on December 5, 1988, and developed the following proposal:

A. Proposed Replacement of Appendix H.

Preamble:

Recombinant DNA molecules contained in an organism or in a viral genome shall be shipped under the appropriate requirements of the U.S. Public Health Service (42 CFR, part 72), U.S. Department of Agriculture (9 CFR, subchapters D&E; 7 CFR, part 340) and/or the U.S. Department of Transportation (49 CFR, part 173). For purposes of these Guidelines the following recombinant DNA molecules contained in an organism or in a viral genome shall be shipped as etiologic agents: (1) Those listed as Class 2, 3, or 4 agents in Appendix B; and/or (2) those contained in reference C–III–2[1]; and/or (3) those regulated as animal or plant pathogens or pests under titles 7 and 9 CFR; or (4) host organisms containing recombinant DNA derived from those organisms or viral genomes.

* Member, Public Information Brochure Working Group

** Chair, Public Information Brochure Working Group

Appendix H–I:

An illustration of one method of packaging and labeling of recombinant DNA-containing microorganisms and viral genomes defined as etiologic agents in the Preamble is shown in Figures 1, 2, and 3. Additional information on packaging and shipping is given in the Laboratory Safety Monograph—A Supplement to the NIH Guidelines for Recombinant DNA Research, available from the Office of Recombinant DNA Activities and in the publication Biosafety in Microbiological and Biomedical Laboratories.[1]

Appendix H–II—Footnote and References of Appendix H.

B. Proposed Replacement of the Illustration in Appendix H.

The heading changes and the replacement paragraph were written by NIH staff on December 12, 1988, to reflect the intent of the Definitions Subcommittee of the RAC.

The replacement paragraph would read:

Figures 1, 2, and 3 depict one method for the packaging and labeling of those recombinant DNA-containing organisms and viral genomes defined as etiologic agents in the Preamble of Appendix H. The key features are identified in Figure 1. It is the responsibility of the shipper to comply with the applicable requirements of 42 CFR part 72 and 49 CFR part 173 when shipping biological materials or etiologic agents. It is recommended that all organisms containing recombinant molecules, which are exempt and/or Class 1 agents, should be shipped in secure, leak-proof containers.

(See illustration in **Federal Register** of December 30, 1988 (53 FR 53266)).

The proposal was published for comment in the **Federal Register** of December 30, 1988 (53 FR 53262).

After considering this proposal at the January 30, 1989, meeting, the RAC members agreed that it solved 90 percent of the difficulties posed by the original version, but that additional work was needed.

The Definitions Subcommittee met on July 12, 1989, and adopted the following motion:

To recommend to the Recombinant DNA Advisory Committee consideration and adoption of the following amendment to Appendix H of the *NIH Guidelines for Research Involving Recombinant DNA Molecules:*

Appendix H is to be replaced as follows:

Appendix H—Shipment.

Recombinant DNA molecules contained in an organism or in a viral genome shall be shipped under the applicable regulations of the U.S. Postal Service; the U.S. Public Health Service (42 CFR part 72); the U.S. Department of Agriculture (9 CFR subchapters D and E; 7 CFR part 340); and/or the U.S. Department of Transportation (49 CFR parts 171–179).

For purposes of the NIH Guidelines:

Host organisms or viruses will be defined as etiologic agents regardless of whether or not they contain recombinant DNA if they are regulated as human pathogens by the U.S. Public Health Service (42 CFR part 72) or as animal pathogens or plant pests under the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (titles 9 and 7 CFR, respectively).

Additionally, host organisms and viruses will be defined as etiologic agents if they contain recombinant DNA when:

A. the recombinant DNA includes the complete genome of a host organism or virus regulated as a human or animal pathogen or a plant pest; or

B. the recombinant DNA codes for a toxin or other factor directly involved in eliciting human, animal or plant disease or inhibiting plant growth and is carried on an expression vector or within the host chromosome and/or when the host organism contains a conjugation proficient plasmid or a generalized transducing phage; or

C. the recombinant DNA comes from a host organism or virus regulated as a human or animal pathogen or as a plant pest and has not been aequately characterized to demonstrate that it does not code for a factor involved in eliciting human, animal or plant disease.

Appendix H–1—Footnotes and References of Appendix H.

For further information on shipping etiologic agents, please contact: (1) Centers for Disease Control, ATTN: Biohazards Control Office, 1600 Clifton Road, Atlanta, Georgia 30333, (404) 639–3883, FTS 236–3883; (2) Department of Transportation, ATTN: Office of Hazardous Materials Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–4545; or (3) Department of Agriculture, ATTN: Animal & Plant Health Inspection Service, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–7885 for Animal Pathogens, (301) 436–7612 for Plant Pests.

The proposal was published for comment in the **Federal Register** of September 1, 1989 (54 FR 36698).

The RAC considered this proposal at the October 6, 1989, meeting.

The RAC voted to adopt the following revision of Appendix H to the *NIH Guidelines* by a vote of 15 in favor, none opposed, and no abstentions:

Appendix H—Shipment.

Recombinant DNA molecules contained in an organism or in a viral genome shall be shipped under the applicable regulations of the U.S. Postal Service (39 CFR part III); the U.S. Public Health Service (42 CFR part 72); the U.S. Department of Agriculture (9 CFR subchapters D and E; 7 CFR part 340); and/or the U.S. Department of Transportation (49 CFR parts 171–179).

For purposes of the NIH Guidelines:

Host organisms or viruses will be shipped as etiologic agents regardless of whether or not they contain recombinant DNA if they are regulated as human pathogens by the U.S. Public Health Service [42 CFR part 72] or as animal pathogens or plant pests under the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture [titles 9 and 7 CFR, respectively].

Additionally, host organisms and viruses will be shipped as etiologic agents if they contain recombinant DNA when:

A. the recombinant DNA includes the complete genome of a host organism or virus regulated as a human or animal pathogen or a plant pest; or

B. the recombinant DNA codes for a toxin or other factor directly involved in eliciting human, animal or plant disease or inhibiting plant growth and is carried on an expression vector or within the host chromosome and/or when the host organism contains a conjugation proficient plasmid or a generalized transducing phage; or

C. the recombinant DNA comes from a host organism or virus regulated as a human or animal pathogen or as a plant pest and has not been adequately characterized to demonstrate that it does not code for a factor involved in eliciting human, animal or plant disease.

Appendix H–1—Footnotes and References of Appendix H.

For further information on shipping etiologic agents, please contact: (1) Centers for Disease Control, ATTN: Biohazards Control Office, 1600 Clifton Road, Atlanta, Georgia 30333, (404) 639–3883, FTS 236–3883; (2) Department of Transportation, ATTN: Office of Hazardous Materials Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366–4545; or (3) Department of Agriculture, ATTN: Animal & Plant Health Inspection Service, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–7885 for Animal Pathogens, (301) 436–7612 for Plant Pests.

I accept this recommendation and Appendix H has been modified accordingly.

D. Proposed Amendment of Appendix A, Sublist A, and Appendix B–I–B–1 of the NIH Guidelines Regarding Klebsiella oxytoca.

In a letter dated August 3, 1989, Dr. Rogers Yocum, Director, Biochemical Products and Processes, Biotechnica International, Cambridge, Massachusetts, requests that certain experiments involving all strains derived from *Klebsiella oxytoca* strain M5a1 be given exempt or BL1 status under the NIH Guidelines.

In his August 3, 1989, letter, Dr. Yocum states:

BioTechnica International, Inc. would like to request that certain experiments involving all strains derived from *Klebsiella oxytoca* strain M5a1 be given exempt or BL1 status in the NIH Guidelines for Recombinant DNA Research. We believe that *K oxytoca* M5a1 has had a long history of safe use in many laboratories and that BL1 containment should

[1] "Biosafety in Microbial and Biomedical Laboratories, 2nd Edition, (May 1988), U.S. Department of Health and Human Services, Centers for Disease Control, Atlanta, Georgia 30333, and National Institutes of Health, Bethesda, Maryland 20892."

be more than adequate. Self cloning experiments and experiments involving DNA clones isolated from non-pathogenic organisms or clones that are known not to encode production of toxic materials and transformed into M5a1 should be as harmless as experiments that utilize the non-recombinant strain. Below we will document what we know of the history and the nature of *K. oxytoca* M5a1, which we shall call "M5a1" from here on.

The earliest reference we know for M5a1 is a 1946 paper on butanediol fermentation (Freeman (1946), The fermentation of sucrose by *Aerobacter aerogenes*, *Chemical Abstracts in Biochemistry* 41: 389–398). M5a1 was isolated in the 1930's by Dr. Elizabeth McCoy at the University of Wisconsin (Winston Brill, personal communication). The strain was originally classified as *Aerobacter aerogenes*, (Wilson (1955), Nitrogen fixation in *Aerobacter aerogenes*, in Biochemistry of Nitrogen, A.I. Vitanen Homage Volume, *Ann. Acad. Scientarium*. Fennicae Ser. AII 60, 139–150; Mahl et al. (1965) Nitrogen fixation by members of the tribe *Klebsiella*, *J. Bact.* 89: 1481–1487). The strain was distributed to various workers interested in free living nitrogen fixing bacteria in the 1940's by Dr. M.J. Johnson of the University of Wisconsin and in the 1960's by Dr. Perry Wilson also of the University of Wisconsin. In 1965 the strain was reclassified as *Klebsiella pneumoniae* by the CDC (CDC #2551–63). M5a1 was once again reclassified in 1977 to *K. oxytoca* (CDC Publication 78–6356). The primary taxonomic difference between *K. oxytoca* and *K. pneumonia* is that *K. oxytoca* produces indole while *K. pneumoniae* does not. We have tested M5a1 for indole production and have confirmed that M5a1 does produce indole from tryptophan. In general, *K. oxytoca* is found in the intestines of humans and animals, and in "botantical and aquatic environments" (*Bergey's Manual of Systematic Bacteriology* (1986), Sneath, ed., Williams and Wilkins, Baltimore). Thus *K. oxytoca* appears to be ubiquitous. Wild-type M5a1 is resistant to low levels of ampicillin (up to 100 μg/ml but it is sensitive to higher levels of ampicillin and usual experimental levels of kanamycin, tetracycline, cephalosporins and chloramphenicol.

Interest in M5a1 expanded in 1971 (Streicher et al. (1971), Transduction of nitrogen fixation genes in *Klebsiella pneumoniae DNAs* 68: 1174–1177). M5a1 was one of two strains of *K. pneumoniae* that was shown to be sensitive to bacteriophage P1 out of a total of 27 strains tested. The significance of P1 sensitivity was that P1 is routinely used for generalized transduction in *E. coli*, an extremely useful genetic technique. The ability to transduce mutations among strains of *K. pneumoniae* would greatly accelerate study of the genes involved in nitrogen fixation. Thus M5a1 became the strain of choice for studying the genetics of nitrogen fixation in at least four different labs: Ray Valentine, University of California, Berkeley; Winston Brill, University of Wisconsin; Ray Dixon, Sussex; Ethan Signer and Fred Ausubel, MIT. The MIT lab renamed M5a1 as "KP1," which reflects its seminal position in their strain collection. The MIT group then discovered that M5a1 would support growth of the lambdoid caliphage 424 and that M5a1 had a DNA restriction system that prevented efficient transfer of DNA from *E. coli* to M5a1. They subsequently isolated a restrictionless mutant of M5a1, called KP5022, which became the parent of many other derivatives (Streicher et al. (1974). Regulation of Nitrogen Fixation in *Klebsiella pneumoniae*, *J. Bact.* 120: 815–821).

M5a1 was then shown to be "non-capsulated," a trait that is common with *E. coli* K–12, and which may account for the reduced pathogenicity of *E. coli* K–12 (Shanmugam et al. (1974) *Bioch. Biophys. Acta* 338: 545–553). In fact it was probably the non-capsulated nature of M5a1 that made it more susceptible than other *Klebsiella* strains to phages of P1 and 424.

Winston Brill's group showed that bacteriophage Mu could infect M5a1. The group then used variants of Mu to mutagenize and construct fusions of *nif* genes to *E. coli* lacZ. They renamed M5a1 as 'UN,' and generated many hundreds of derivatives, such as UN1290, which contains the recA56 allele of *E. coli* transduced into M5a1 (MacNeil et al. (1981), Regulation of Nitrogen Fixation in *Klebsiella pneumoniae*, *J. Bact.* 145: 348–357; MacNeil et al. (1978) Fine structure mapping and complementation analysis of *nif* genes in *Klebsiella pneumoniae*, *J. Bact.* 136: 253–288).

During the 1970's there was much work at the University of Sussex and elsewhere on the enzymology of nitrogen fixation. Large amounts of nitrogenase enzyme were required, and since the genetic work was being done in M5a1 and its derivatives, M5a1 became the organism of choice for producing nitrogenase. M5a1 was grown routinely in 1000 liter fermentors, and kilograms quantities of cell pastes were routinely worked up, using no special precautions (Eady et al. (1972) *Biochem. J.* 128: 655–675). In fact, they reported injecting live M5a1 into rabbits for the purpose of raising antibodies against intact cells. No pathogenic effects were observed (see Appendix I, page 4). Appendix I also documents the successful M5a1 declassification petitions of the Postgate lab at Sussex to the Genetic Manipulation Advisory Committee, U.K. They obtained permission to perform various M5a1 recombinant experiments under conditions of good microbiological practice. Thus M5a1 has been used in several labs, both genetic and biochemical since 1948. No harmful effects of M5a1 have been reported from any of the labs.

Finally, starting in the 1970's, many recombinant DNA experiments have been done with M5a1. In particular, all of the genes involved in nitrogen fixation and many of the genes involved in regulation of nitrogen metabolism of M5a1 have been cloned into *E. coli* K–12 (for examples, see Dixon et al. (1976) Construction of a P plasmid carrying nitrogen fixation genes from *Klebsiella pneumoniae*, *Nature* 260: 268–271; Cannon et al. (1988) The nucleotide sequence of the *nif* gene of *Klebsiella pneumoniae*, *Nuc. Acids. Res.* 16: 11379).

The current NIH guidelines for recombinant DNA work (Federal Register Volume 51, no. 88, May 7, 1986) are contradictory with respect to *Klebsiella*. On one hand, the genus *Klebsiella* is considered to be a natural DNA exchanger with *E. coli*, and so any cloning between *E. coli* and *Klebsiella* in either direction is exempt (p. 16967). On the other hand, *Klebsiella*—all species and serotypes—is listed as a Class 2 pathogen, and as such, cloning into *Klebsiella* requires BL2 containment (paragraph III–B–1–a, p. 16960) and cloning recombinant DNA from *Klebsiella* into non-pathogenic prokaryotes (i.e. *E. coli* K-12) also requires BL2 containment (paragraph III–B–2–a, p. 16960). We request that the status of *Klebsiella* be clarified, particularly in the case of *K. oxytoca* strain M5a1. Specifically, we propose that the following classes of experiments and fermentations of the resulting organism be exempted from the guidelines:

(1) All self cloning experiments involving DNA from M5a1 and any of its derivatives.

(2) All experiments involving clones of M5a1 DNA into *E. coli* K–12.

In addition, we propose that the following classes of experiments be given BL1 status:

(1) All experiments involving clones of *E. coli* K–12 DNA into M5a1.

(2) All experiments involving well defined clones from nonpathogenic organisms or clones known not to contain DNA that encodes production of material toxic to vertebrates into M5a1.

We feel that the history of safe use of M5a1 and the ubiquitous distribution of *K. oxytoca* justify these containment conditions.

This proposal was published for comment in the Federal Register of September 1, 1989 (54 FR 36698).

The RAC considered this amendment at the October 6, 1989, meeting.

The RAC voted to appove this amendment by vote of 14 in favor, none opposed, and one abstention. The NIH Guidelines will be revised to read in Appendix A, Sublist A, No. 6, as follows:

6. Genus *Klebsiella* (including oxytoca).

The NIH Guidelines will be revised to read in Appendix B–I–B–1 as follows:

Klebsiella—all species except *oxytoca*.

I accept these recommendations and Appendix A, Sublist A, and Appendix B–I–B–1 have been modified accordingly.

E. Points to Consider for Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects

On September 29, 1988, the RAC adopted the Points to Consider in the Design and Submission of Human Somatic-Cell Gene Therapy Protocols, which was prepared by the Human Gene Therapy Subcommittee.

At the January 30, 1989, meeting, the RAC endorsed a proposal to form a subcommittee to update and report to the Human Gene Therapy Subcommittee recommendations to amend the Points to Consider. The Points to Consider

Subcommittee met on March 31, 1989, and developed a draft revision of the original document.

On July 31, 1989, the Human Gene Therapy Subcommittee met to consider this document. The title and scope of the 1986 document were revised to reflect the Subcommittee's experiences reviewing a proposal for human gene transfer.

The Points to Consider document was published for comment in the **Federal Register** of September 1, 1989 (54 FR 36698).

The RAC considered this document at the October 6, 1989, meeting.

After a title revision, the RAC voted to approve the following version as the final document:

NATIONAL INSTITUTES OF HEALTH

Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects

Human Gene Therapy Subcommittee NIH Recombinant DNA Advisory Committee

OUTLINE

National Institutes of Health

Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into Human Subjects

Applicability

These Points to Consider apply to research conducted at or sponsored by an institution that receives any support for recombinant DNA research from the National Institutes of Health (NIH). Researchers not covered by the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16959) are encouraged to use the Points to Consider. Experiments in which recombinant DNA is introduced into cells of a human subject with the intent of stably modifying the subject's genome are covered by Section III–A–4 of the NIH Guidelines for Research Involving Recombinant DNA Molecules. Section III–A–4 applies both to recombinant DNA and to DNA or RNA derived from recombinant DNA.

Introduction

(1) This document is intended to provide guidance in preparing proposals for NIH consideration under Section III–A–4 of the NIH Guidelines for Research Involving Recombinant DNA Molecules. Section III–A–4 requires experiments involving the transfer of recombinant DNA into human subjects to be reviewed by the NIH Recombinant DNA Advisory Committee (RAC) and approved by the NIH. RAC consideration of each proposal will be on a case-by-case basis and will follow publication of a precis of the proposal in the **Federal Register**, an opportunity for public comment, and a review of the proposal by the Human Gene Therapy Subcommittee (the Subcommittee) of the RAC. RAC recommendations on each proposal will be forwarded to the NIH Director for a decision which will then be published in the **Federal Register**.

(2) In general, it is expected that the transfer of recombinant DNA into human subjects will not present a risk to public health or to the environment as the recombinant DNA is expected to be confined to the human subject. Nevertheless, Section I–B–4–b of the Points to Consider document specifically asks the researchers to address this point.

(3) This document will be considered for revision as experience in evaluating proposals accumulates and as new scientific developments occur. This review will be carried out periodically as needed.

(4) A proposal will be considered by the RAC only after the protocol has been approved by the local Institutional Biosafety Committee (IBC) and by the local Institutional Review Board (IRB) in accordance with Department of Health and Human Services (DHHS) Regulations for the Protection of Human Subjects (45 Code of Federal Regulations, part 46). (If a proposal involves children, special attention should be paid to subpart D of these DHHS regulations.) The IRB and IBC may, at their discretion, condition their approval on further specific deliberation by the RAC and its Subcommittee. Consideration of proposals by the RAC may proceed simultaneously with review by any other involved federal agencies [1] provided that the RAC is notified of the simultaneous review. Meetings of the Committee and the Subcommittee will be open to the public except where trade secrets or proprietary information would be disclosed. The committee prefers that the first proposals submitted for RAC review contain no proprietary information or trade secrets, enabling all aspects of the review to be open to the public. The public review of these protocols will serve to inform the public not only on the technical aspects of the proposals but also on the meaning and significance of the research.

(5) The clinical application of recombinant DNA techniques raises two general kinds of questions: (i) The questions usually discussed by IRBs in their review of any proposed research involving human subjects; and (ii) broader issues. The first type of question is addressed principally in part I of this document. Several broader issues are discussed later in this Introduction and in part II below.

(6) Following the Introduction, this document is divided into four parts. Part I requests a description of the protocol with special attention to the short-term risks and benefits of the proposed research to the patient [2] and to other people, the selection of patients, informed consent, and privacy and confidentiality. In part II, investigators are requested to address special issues pertaining to the free flow of information about the clinical trials. These issues lie outside the usual purview of IRBs and reflect general public concerns about biomedical research. Part III summarizes other requested documentation that will assist the RAC and its Subcommittee in their review of the proposals. Part IV specifies reporting requirements.

(7) The RAC and its Subcommittee will not at present entertain proposals for germ line alterations but will consider for approval protocols involving somatic cell gene therapy. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into a patient's somatic cells. In germ line alterations, a specific attempt is made to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring.

(8) The acceptability of human somatic cell gene therapy has been addressed in several public documents as well as in numerous academic studies. The November 1982 report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Splicing Life, resulted from a two-year process of public deliberations and hearings; upon release of that report, a House subcommittee held three days of public hearings with witnesses from a wide range of fields from the biomedical and social sciences to theology, philosophy, and law. In December 1984, the Office of Technology Assessment released a background paper, Human Gene Therapy, which concluded:

Civic, religious, scientific, and medical groups have all accepted, in principle, the

appropriateness of gene therapy of somatic cells in humans for specific genetic diseases. Somatic cell gene therapy is seen as an extension of present methods of therapy that might be preferable to other technologies.

In light of this public support, the RAC is prepared to consider proposals for somatic cell gene therapy.

(9) In their evaluation of proposals involving the transfer of recombinant DNA into human subjects, the RAC and its Subcommittee will consider whether the design of such experiments offers adequate assurance that their consequences will not go beyond their purpose, which is the same as the traditional purpose of clinical investigations, namely, to protect the health and well-being of the individual subjects being treated while at the same time gathering generalizable knowledge.

Two possible undesirable consequences of the transfer of recombinant DNA would be unintentional: (1) Vertical transmission of genetic changes from an individual to his or her offspring or (2) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, this document requests information that will enable the RAC and its Subcommittee to assess the possibility that the proposed experiments will inadvertently affect reproductive cells or lead to infection of other people (e.g., treatment personnel or relatives).

(10) In recognition of the social concern that surrounds the subject of gene transfer, the Subcommittee will cooperate with other groups in assessing the possible long-term consequences of the transfer of recombinant DNA into human subjects and related laboratory and animal experiments in order to define appropriate human applications of this emerging technology.

(11) Responses to the questions raised in these Points to Consider should be provided in the form of either written answers or references to specific sections of the protocol or its appendices.

(12) Investigators should indicate points which are not applicable with a brief explanation. Investigators submitting proposals that employ essentially the same vector systems (or with minor variations), and/or that are based on the same preclinical testing as proposals previously reviewed by the Subcommittee and the Recombinant DNA Advisory Committee (RAC), may refer to preceding documents without having to rewrite such material.

I. Description of Proposal

A. Objectives and rationale of the proposed research.

State concisely the overall objectives and rationale of the proposed study. Please provide information on the specific points that relate to whichever type of research is being proposed:

1. Use of recombinant DNA for therapeutic purposes

For research in which recombinant DNA is transferred in order to treat a disease or disorder (e.g., genetic diseases, cancer, and metabolic diseases), the following questions should be addressed:

a. Why is the disease selected for treatment by means of gene therapy a good candidate for such treatment?

b. Describe the natural history and range of expression of the disease selected for treatment. What objective and/or quantitative measures of disease activity are available? In your view, are the usual effects of the disease predictable enough to allow for meaningful assessment of the results of gene therapy?

c. Is the protocol designed to prevent all manifestations of the disease, to halt the progression of the disease after symptoms have begun to appear, or to reverse manifestations of the disease in seriously ill victims?

d. What alternative therapies exist? In what groups of patients are these therapies effective? What are their relative advantages and disadvantages as compared with the proposed gene therapy?

2. Transfer of DNA for Other Purposes

a. Into what cells will the recombinant DNA be transferred? Why is the transfer of recombinant DNA necessary for the proposed research? What questions can be answered by using recombinant DNA?

b. What alternative methodologies exist? What are their relative advantages and disadvantages as compared to the use of recombinant DNA?

B. Research design, anticipated risks and benefits.

1. Structure and characteristics of the biological system

Provide a full description of the methods and reagents to be employed for gene delivery and the rationale for their use. The following are specific points to be addressed:

A. What is the structure of the cloned DNA that will be used?

(1) Describe the gene (genomic or cDNA), the bacterial plasmid or phage vector, and the delivery vector (if any). Provide complete nucleotide sequence analysis or a detailed restriction enzyme map of the total construct.

(2) What regulatory elements does the construct contain (e.g., promoters, enhancers, polyadenylation sites, replication origins, etc.)? From what source are these elements derived? Summarize what is currently known about the regulatory character of each element.

(3) Describe the steps used to derive the DNA construct.

b. What is the structure of the material that will be administered to the patient?

(1) Describe the preparation, structure, and composition of the materials that will be given to the patient or used to treat the patient's cells.

(a) If DNA, what is the purity (both in terms of being a single DNA species and in terms of other contaminants)? What tests have been used and what is the sensitivity of the tests?

(b) If a virus, how is it prepared from the DNA construct? In what cell is the virus grown (any special features)? What medium and serum are used? How is the virus purified? What is its structure and purity? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials (for example, VL30 RNA, other nucleic acids, or proteins) or contaminating viruses (both replication-competent or replication-defective) or other organisms in the cells or serum used for preparation of the virus stock including any contaminants that may have biological effects?

(c) If co-cultivation is employed, what kinds of cells are being used for co-cultivation? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials? Specifically, what tests are being done to assess the material to be returned to the patient for the presence of live or killed donor cells or other non-vector materials (for example, VL30 sequences) originating from those cells?

(d) If methods other than those covered by (a)-(c) are used to introduce new genetic information into target cells, what steps are being taken to detect and eliminate any contaminating materials? What are possible sources of contamination? What is the sensitivity of tests used to monitor contamination?

(2) Describe any other material to be used in preparation of the material to be administered to the patient. For example, if a viral vector is proposed, what is the nature of the helper virus or cell line? If carrier particles are to be used, what is the nature of these?

2. Preclinical studies, including risk-assessment studies

"Describe the experimental basis (derived from tests in cultured cells and animals) for claims about the efficacy and safety of the proposed system for gene delivery and explain why the model(s) chosen is (are) the most appropriate.

a. Laboratory studies of the delivery system.

(1) What cells are the intended target cells of recombinant DNA? It target cells are to be treated ex vivo and returned to the patient, how will the cells be characterized before and after treatment? What is the theoretical and practical basis for assuming that only the target cells will incorporate the DNA?

(2) Is the delivery system efficient? What percentage of the target cells contain the added DNA?

(3) How is the structure of the added DNA sequences monitored and what is the sensitivity of the analysis? Is the added DNA extrachromosomal or integrated? Is the added DNA unrearranged?

(4) How many copies are present per cell? How stable is the added DNA both in terms of its continued presence and its structural stability?

b. Laboratory studies of gene transfer and expression.

(1) What animal and cultured cell models were used in laboratory studies to assess the *in vivo* and *in vitro* efficacy of the gene transfer system? In what ways are these models similar to and different from the proposed human treatment?

(2) What is the minimal level of gene transfer and/or expression that is estimated to be necessary for the gene transfer protocol to be successful in humans? How was this level determined?

(3) Explain in detail all results from animal and cultured cell model experiments which assess the effectiveness of the delivery system (part 2.a. above) in achieving the minimally required level of gene transfer and expression (2.b.(2) above).

(4) To what extent is expression only from the desired gene (and not from the surrounding DNA)? To what extent does the insertion modify the expression of other genes?

(5) In what percentage of cells does expression from the added DNA occur? Is the product biologically active? What percentage of normal activity results from the inserted gene?

(6) Is the gene expressed in cells other than the target cells? If so, to what extent?

c. Laboratory studies pertaining to the safety of the delivery/expression system.

(1) If a retroviral system is used:

(a) What cell types have been infected with the retroviral vector preparation? Which cells, if any, produce infectious particles?

(b) How stable are the retroviral vector and the resulting provirus against loss, rearrangement, recombination, or mutation? What information is available on how much rearrangement of recombination with endogenous or other viral sequences is likely to occur in the patient's cells? What steps have been taken in designing the vector to minimize instability or variation? What laboratory studies have been performed to check for stability, and what is the sensitivity of the analyses?

(c) What laboratory evidence is available concerning potential harmful effects of the transfer, e.g., development of neoplasia, harmful mutations, regeneration of infectious particles, or immune responses? What steps have been taken in designing the vector to minimize pathogenicity? What laboratory studies have been performed to check for pathogenicity, and what is the sensitivity of the analyses?

(d) Is there evidence from animal studies that vector DNA has entered untreated cells, particularly germ line cells? What is the sensitivity of the analyses?

(e) Has a protocol similar to the one proposed for a clinical trial been carried out in non-human primates and/or other animals? What were the results? Specifically, is there any evidence that the retroviral vector has recombined with any endogenous or other viral sequences in the animals?

(2) If a non-retroviral delivery system is used: What animal studies have been done to determine if there are pathological or other undesirable consequences of the protocol (including insertion of DNA into cells other than those treated, particularly germ line cells)? How long have the animals been studied after treatment? What tests have been used and what is their sensitivity?

3. Clinical procedures, including patient monitoring

Describe the treatment that will be administered to patients and the diagnostic methods that will be used to monitor the success or failure of the treatment. If previous clinical studies using similar methods have been performed by yourself or others, indicate their relevance to the proposed study.

a. Will cells (e.g., bone marrow cells) be removed from patients and treated ex vivo? If so, what kinds of cells will be removed from the patients, how many, how often, and at what intervals?

b. Will patients be treated to eliminate or reduce the number of cells containing malfunctioning genes (e.g., through radiation or chemotherapy)?

c. What treated cells (or vector/DNA combination) will be given to patients? How will the treated cells be administered? What volume of cells will be used? Will there be single or multiple treatments? If so, over what period of time?

d. How will it be determined that new gene sequences have been inserted into the patient's cells and if these sequences are being expressed? Are these cells limited to the intended target cell populations? How sensitive are these analyses?

e. What studies will be done to assess the presence and effects of the contaminants?

f. What are the clinical endpoints of the study? Are there objective and quantitative measurements to assess the natural history of the disease? Will such measurements be used in following patients? How will patients be monitored to assess specific effects of the treatment on the disease? What is the sensitivity of the analyses? How frequently will follow-up studies be done? How long will patient follow-up continue?

g. What are the major beneficial and adverse effects of treatment that you anticipate? What measures will be taken in an attempt to control or reverse these adverse effects if they occur? Compare the probability and magnitude of potential adverse effects on patients with the probability and magnitude of deleterious consequences from the disease if recombinant DNA transfer is not used.

h. If a treated patient dies, what special post mortem studies will be performed?

4. Public health considerations

Describe any potential benefits and hazards of the proposed therapy to persons other than the patients being treated. Specifically:

a. On what basis are potential public health benefits or hazards postulated?

b. Is there a significant possibility that the added DNA will spread from the patient to other persons or to the environment?

c. What precautions will be taken against such spread (e.g., to patients sharing a room, health-care workers, or family members)?

d. What measures will be undertaken to mitigate the risks, if any, to public health?

e. In light of possible risks to offspring, including vertical transmission, will birth control measures be recommended to the patients? Are such concerns applicable to health care personnel?

5. Qualifications of investigators, adequacy of laboratory and clinical facilities

Indicate the relevant training and experience of the personnel who will be involved in the preclinical studies and clinical administration of recombinant DNA. In addition, please describe the laboratory and clinical facilities where the proposed study will be performed.

a. What professional personnel (medical and nonmedical) will be involved in the proposed study and what is their relevant expertise? Please provide curricula vitae of key professional personnel (see section III–E).

b. At what hospital or clinic will the treatment be given? Which facilities of the hospital or clinic will be especially important for the proposed study? Will patients occupy regular hospital beds or clinical research center beds? Where will patients reside during the follow-up period? What special arrangements will be made for the comfort and consideration of the patients? Will the research institution designate an ombudsman, patient care representative, or other individual to help protect the rights and welfare of the patient?

C. Selection of patients

Estimate the number of patients to be involved in the proposed study. Describe recruitment procedures and patient eligibility requirements, paying particular attention to whether these procedures and requirements are fair and equitable.

1. How many patients do you plan to involve in the proposed study?

2. How many eligible patients do you anticipate being able to identify each year?

3. What recruitment procedures do you plan to use?

4. What selection criteria do you plan to employ? What are the exclusion and inclusion criteria for the study?

5. How will patients be selected if it is not possible to include all who desire to participate?

D. Informed consent

Indicate how patients will be informed about the proposed study and how their consent will be solicited. The consent procedure should adhere to the requirements of DHHS regulations for the protection of human subjects (45 CFR, part 46). If the study involves pediatric or mentally handicapped patients, describe procedures for seeking the permission of parents or guardians and, where applicable, the assent of each patient. Areas of special concern highlighted below include potential adverse effects, financial costs, privacy, long-term follow-up, and post mortem examination.

1. How will the major points covered in sections I–A through I–C of this document be disclosed to potential participants in this study and/or parents or guardians in language that is understandable to them?

2. How will the innovative character and the theoretically possible adverse effects of the experiment be discussed with patients and/or parents or guardians? How will the potential adverse effects be compared with the consequences of the disease?

3. What explanation of the financial costs of the experiment, follow-up care, and any available alternatives will be provided to patients and/or parents or guardians?

4. How will patients and/or their parents or guardians be informed that the innovative character of the experiment may lead to great interest by the media in the research and in treater patients?

5. How will patients and/or their parents or guardians be informed:

a. About the irreversible consequences of some of the procedures performed?

b. About any adverse medical consequences that may occur if a subject withdraws from the study once it has begun?

c. About expectations of willingness to cooperate in long-term follow-up?

d. About expectations that permission to perform an autopsy will be granted in the event of a patient's death following transfer as a precondition for a patient's participation in the study? This stipulation is included because an accurate determination of the precise cause of a patient's death would be of vital importance to all future patients.

E. Privacy and confidentiality

Indicate what measures will be taken to protect the privacy of patients and their families as well as to maintain the confidentiality of research data.

1. What provisions will be made to honor the wishes of individual patients (and the parents or guardians of pediatric or mentally handicapped patients) as to whether, when, or how the identity of patients is publicly disclosed.

2. What provision will be made to maintain the confidentiality of research data, at least in cases where data could be linked to individual patients?

II. Special Issues

Although the following issues are beyond the normal purview of local IRBs, the RAC and its Subcommittee request that investigators respond to questions A and B below.

A. What steps will be taken, consistent with point I–E above, to ensure that accurate and appropriate information is made available to the public with respect to such public concerns as may arise from the proposed study?

B. Do you or your funding sources intend to protect under patent or trade secret laws either the products or the procedures developed in the proposed study? If so, what steps will be taken to permit as full communication as possible among investigators and clinicians concerning research methods and results?

III. Requested Documentation

In addition to responses to the questions raised in these Points to Consider, please submit the following materials:

A. Your protocol as approved by your local IRB and IBC.

B. Results of local IRB and IBC deliberations and recommendations that pertain to your protocol.

C. A one-page scientific abstract of the protocol.

D. A one-page description of the proposed experiment in nontechnical language.

E. Curricula vitae for key professional personnel.

F. An indication of other federal agencies to which the protocol is being submitted for review.

G. Any other material which you believe will aid in the review.

IV. Reporting Requirements

A. Serious adverse effects of treatment should be reported immediately to both the local IRB and the NIH Office for Protection from Research Risks, and a written report should be filed with both groups. A copy of the report should also be forwarded to the NIH Office of Recombinant DNA Activities (ORDA).

B. Reports regarding the general progress of patients should be filed with both your local IRB and ORDA within 6 months of the commencement of the experiment and at six-month intervals thereafter. These twice-yearly reports should continue for a sufficient period of time to allow observation of all major effects. In the event of a patient's death, a summary of the special post mortem studies and statement of the cause of death should be submitted to the IRB and ORDA, if available.

Footnotes:

1. The Food and Drug Administration (FDA) has jurisdiction over drug products intended for use in clinical trials of human gene transfer. For general information on FDA's policies and regulatory requirements, please see the **Federal Register**, Volume 51, pages 23309–23313, 1986.

2. The term "patient" and its variants are used in the text as a shorthand designation for "patient-subject."

I accept this document as a source of information for investigators who will propose to do experiments involving the transfer of recombinant DNA into human subjects.

F. Amendment to Appendix D–XIV of the NIH Guidelines.

In a letter dated November 1, 1989, Dr. John R. Lowe, Chairman of the Institutional Biosafety Committee at the U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID), requests that certain experiments involving products of a yellow fever virus originating from a 17–D yellow fever clone, but containing some sequences from the virulent Asibi strain of yellow fever virus, be carried out in animals at the BL–3 containment level.

Further, it is requested that there be a change in biocontainment for certain experiments involving vaccine studies of Venezuelan equine encephalitis virus; if this request should be approved, the animal studies in mice and hamsters then could be done at the Biosafety Level (BL) 3 containment level. It should be noted that the laboratory facilities proposed for these experiments operate at a BL–3 + level of containment, which means that they possess some specific features characteristic of BL–4 containment.

These requests were published for comment in the **Federal Register** on January 4, 1990 (55 FR 392), and a correction notice published in the **Federal Register** on January 22, 1990 (55 FR 2152).

The RAC considered these requests at the February 5, 1990, meeting.

On the first request, the RAC, by a vote of 15 in favor, 0 opposed, and no abstentions, accepted the following motion:

To accept and pass the amendment to allow recombinant studies between the vaccine strain and the parental Asibi strain of yellow fever virus in Biosafety Level 3 facilities using HEPA filters, and with vaccination of personnel as per the NIH–CDC Guidelines.

On the second request, the RAC, by a vote of 14 in favor, 0 opposed, and two abstentions, accepted the following motion:

To accept the proposal to reclassify the work done with Venezuelan equine encephalitis virus clones and their attenuated mutants at Biosafety Level 3 using HEPA filters plus vaccination of personnel as per the NIH–CDC Guidelines.

II. Summary of Actions

A. Revision of Section III–A–2 of the NIH Guidelines.

The amended version of section III–A–2 reads as follows:

III–A–2. Deliberate release into the environment of any organism containing recombinant DNA except those listed below. The term "deliberate release" is defined as a planned introduction of recombinant DNA-containing microorganisms, plants, or animals into the environment.

III–A–2–a. Introduction conducted under conditions considered to be accepted scientific practices in which there is adequate evidence of biological and/or physical control of the recombinant DNA-containing organisms. The nature of such evidence is described in Appendices L, M, N, and O.

III–A–2–b. Deletion derivatives and single base changes not otherwise covered by the Guidelines.

III–A–2–c. For extrachromosomal elements and microorganisms (including viruses), rearrangements and amplifications within a single genome. Rearrangements involving the introduction of DNA from different strains of the same species would not be covered by this exemption.

B. Public Information Brochure—"Gene Therapy for Human Patients."

This brochure provides basic information for the nonscientific public about experiments intended to cure disease through transplantation of genes into the nonreproductive (somatic) cells of human patients. It includes background material about human gene therapy, its purposes and potential, about supervision of the research, and about why and how the public is involved.

This brochure is intended primarily as educational material. This document is a report entirely separate from the NIH Guidelines.

C. Amendment of Appendix H of the NIH Guidelines.

The amended version of Appendix H reads as follows:

Appendix H—Shipment

Recombinant DNA molecules contained in an organism or in a viral genome shall be shipped under the applicable regulations of the U.S. Postal Service [39 CFR, part III]; the U.S. Public Health Service [42 CFR, part 72]; the U.S. Department of Agriculture [9 CFR, subchapters D and E; 7 CFR, part 340]; and/or the U.S. Department of Transportation [49 CFR parts 171–179].

For purposes of the NIH Guidelines:

Host organisms or viruses will be shipped as etiologic agents regardless of whether or not they contain recombinant DNA if they are regulated as human pathogens by the U.S. Public Health Service [42 CFR part 72] or as animal pathogens or plant pests under the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture [Titles 9 and 7 CFR, respectively].

Additionally, host organisms and viruses will be shipped as etiologic agents if they contain recombinant DNA when:

A. the recombinant DNA includes the complete genome of a host organism or virus regulated as a human or animal pathogen or a plant pest; or

B. the recombinant DNA codes for a toxin or other factor directly involved in eliciting human, animal or plant disease or inhibiting plant growth and is carried on an expression vector or within the host chromosome and/or when the host organism contains a conjugation proficient plasmid or a generalized transducing phage; or

C. the recombinant DNA comes from a host organism or virus regulated as a human or animal pathogen or as a plant pest and has not been adequately characterized to demonstrate that it does not code for a factor involved in eliciting human, animal or plant disease.

Appendix H–1—Footnotes and References of Appendix H

For further information on shipping etiologic agents, please contact: (1) Centers for Disease Control, ATTN: Biohazards Control Office, 1600 Clifton Road, Atlanta, Georgia 30333, (404) 639–3883, FTS 236–3883; (2) Department of Transportation, ATTN: Office of Hazardous Materials Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–4545; or (3) Department of Agriculture, ATTN: Animal & Plant Health Inspection Service, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–7885 for Animal Pathogens, (301) 436–7612 for Plant Pests.

D. Amendment of Appendix A, Sublist A, and Appendix B–I–B–1 of the NIH Guidelines Regarding Klebsiella oxytoca.

Sublist A, No. 6 will read as follows:

6. Genus *Klebsiella* (including oxytoca).

Appendix B–I–B–1 will read as follows:

Klebsiella—all species except *oxytoca*.

E. Points to Consider for Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects.

This document provides basic information & guidance for scientists and clinical investigators who are preparing proposals for NIH consideration under Section III–A–4 of the NIH Guidelines requiring experiments involving the transfer of recombinant DNA into human subjects to be reviewed by the RAC and approved by NIH.

F. Amendment to Appendix D–XIV of the NIH Guidelines.

The following section is added to Appendix D:

Appendix D–XIV.

U.S. Army Medical Research Institute of Infectious Diseases [USAMRIID] may conduct certain experiments involving products of a yellow fever virus originating from the 17–D yellow fever clone at the Biosafety Level 3 containment level using HEPA filters and vaccination of laboratory personnel.

In addition, USAMRIID may conduct certain experiments involving vaccine studies of Venezuelan equine encephalitis virus at the Biosafety Level 3 containment level using HEPA filters and vaccination of laboratory personnel.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: February 15, 1990.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 90–4686 Filed 2–28–90; 8:45 am]

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Thursday
March 1, 1990

Part VI

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 517

Training Wage Provisions of the Fair Labor Standards Amendments of 1989; Interim Rule With Request for Comments

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 517

Training Wage Provisions of Fair Labor Standards Amendments of 1989

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: This document provides interim final regulations for the implementation of the training wage provisions of the 1989 Amendments to the Fair Labor Standards Act of 1938 (FLSA), which were signed into law on November 17, 1989. The training wage provisions become effective April 1, 1990, and expire March 31, 1993. Any employer who wishes to employ individuals who are covered by the FLSA (and are not subject to one of the statutory minimum wage exemptions) at the training wage must do so in accordance with these regulations.

The purpose of these regulations is to provide for the implementation of the training wage provisions in the interim while allowing for receipt of public comments.

DATES: *Effective Date:* The interim final rules are effective April 1, 1990, the statutory date the training wage provisions of the 1989 Amendments become effective.

Comments: Comments are due on or before April 30, 1990.

ADDRESSES: Submit written comments (preferably in triplicate) to Nancy M. Flynn, Acting Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Nancy M. Flynn, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Labor Standards Amendments of 1989 were enacted into law on November 17, 1989. Among other provisions, the Amendments permit employers to pay covered employees under the age of 20, under certain conditions, a wage rate of at least 85 percent of the otherwise applicable FLSA minimum wage, but not less than $3.35 per hour, for a period up to 90 days. An employee who has been paid at the training wage for 90 days may be employed at the training wage by a different employer for an additional 90 days, but only if that employer provides on-the-job-training in accordance with regulations issued by the U.S. Department of Labor. The training wage provisions are effective April 1, 1990, and expire March 31, 1993.

It should be noted that the FLSA contains a number of exemptions from its minimum wage provisions and these rules do not apply to such exempt employees. Also, nothing in the FLSA permits an employer to fail to comply with any Federal or State law, local ordinance, or collective bargaining agreement, which establishes a higher wage standard than the FLSA or which prohibits the employment of individuals at a training wage.

II. Paperwork Reduction Act

Reporting and recordkeeping requirements contained in these regulations, as set forth below, have been submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) for review. These requirements are not effective until OMB approval has been obtained. The Department has asked OMB to review and approve these requirements by March 14, and it is believed that this process will be completed in time for the requirements to become effective by April 1, 1990, the statutory effective date of the training wage provisions of the 1989 Amendments.

Public reporting and recordkeeping burdens for this collection of information are estimated to average as follows: 1. Proof of Age (Sec. 517.102)—no burden; 2. Proof of Eligibility for Employment at the Training Wage (Sec. 517.103)—2 minutes per response; 3. Filing of Proof of Eligibility for Employment at the Training Wage (Sec. 517.104)—one-half minute per response; 4. Notice to Employees Paid at the Training Wage (Sec. 517.205)—one-quarter minute per response; 5. Writing the On-the-Job Training Program Plan (Sec. 517.206 (a) and (d))—1 hour per response; 6. Filing of On-the-Job Training Program Plan (Sec. 517.206(e)—one-half minute per response; 7. Posting and Reporting of On-the-Job Training Positions (Sec. 517.206 (f), (g) and (h))—one-half hour per response; including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, U.S. Department of Labor, Room N–1301, 200 Constitution Avenue NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

III. Summary of Rule

Subpart A—General

Subpart A contains a summary of the training wage provisions of the 1989 Amendments, the purpose and scope of these regulations, the effective and expiration dates of the training wage provisions, and the minimum rates payable under the training wage.

This subpart also includes the definitions of terms used in this part. For the most part the definitions conform to the standard definitions used in the FLSA. The definitions of "migrant agricultural worker" and "seasonal agricultural worker" are from the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802 (8) and (10), as the Amendments require, and the definition of "temporary nonimmigrant agricultural worker" is based on the definition of H–2A worker in the Immigration and Naturalization Act, 8 U.S.C. 1101(a)(15)(H)(ii)(a).

The term "ninety days," for purposes of the training wage provisions, is defined to mean a ninety calendar day period of employment, irrespective of the number of hours, days or weeks during such period that an employee performs work. For example, if an employee begins work at the training wage on May 1, 1990, his or her 90-day period of employment would run until July 29, 1990, even though the employee works only three days per week during that period. However, termination of employment or bona fide layoffs during the 90-day period interrupts the running of the period. Thus, if an employee is employed for less than 90 days for an employer, each period of employment would be included until the 90 days is reached.

Subpart B—Employee Eligibility Requirements

Subpart B sets forth the employee eligibility requirements, including the exclusions for migrant and seasonal agricultural workers and temporary nonimmigrant agricultural workers

admitted into the U.S. under the H–2A program, and provides rules on the documentation of age and prior employment which employees must furnish to employers.

In general, an employee is eligible to be paid the training wage if the employee is less than 20 years old and is not a migrant or seasonal agricultural worker or a temporary nonimmigrant agricultural worker. An employee is initially eligible to be paid the training wage until the employee has been employed a cumulative total of 90 days for one or more employers, as defined above. An employee can be employed an additional period of 90 cumulative days for one or more additional employers if the employer(s) meet the training program requirements of Subpart D, and if such employer(s) did not employ the individual during any part of the individual's initial 90-day period of employment at the training wage.

Acceptable types of documentary evidence of age are largely taken from existing FLSA child labor regulations (29 CFR 570.7). In addition, documentary evidence of employment eligibility or identification which is acceptable in completing the Immigration and Naturalization Service's Form I–9 is acceptable provided it shows date of birth.

The Act places the burden on an employee to establish eligibility or ineligibility for the training wage. Such proof shall consist of a signed statement that an employee has not previously been employed, or a signed, accurate list, in a job application or otherwise, of the starting and ending dates and rates of pay that an employee has had since April 1. (Additional proof is required for individuals covered by the "transition rule," as discussed below.) An employer is required to keep these records for three years to establish its employees' eligibility. Absent any attempt at evasion or coercion, such evidence (together with evidence of age) shall constitute a "good faith defense" against violations based on erroneous evidence of age and/or employment history furnished by employees.

Transition Rule

The Department has carefully considered the application of the training wage provisions to current employees, i.e., individuals employed as of April 1, 1990. The statute literally provides that the training wage period commences on April 1, 1990, but is silent on the specific eligibility of current employees for employment at the training wage with their current employers. The legislative history does not reveal that the application of the training wage to current employees was fully considered by the Congress. On the contrary, the focus of the legislative reports and floor debates was the potential impact of the training wage provision on new hires.

The Amendments state that the training wage provisions become effective on April 1, 1990. A literal rule would provide that current employees, even those who have been employed by their current employers for extended periods, are to be treated no differently than prospective employees as to their eligibility for the training wage. However, such a rule would be contrary to the purpose of this provision, namely, to promote the hiring of entry level workers. Moreover, such a narrow rule would be contrary to the clear Congressional intent that no employees should be adversely affected by the new training wage provision, as evidenced by the statute's broad prohibitions against the displacement of workers including reductions in wages or benefits.

In light of the foregoing, the Department has concluded that a special transition rule for current employees, consistent with the overall legislative intent, is needed to effectuate the training wage provisions of the Amendments.

Under the special transition rule in § 517.101(d), employees who are employed on April 1, 1990 (or who are laid off between March 1, 1990, and April 1, 1990, and who are subsequently rehired by the same employer), and who on that date have been employed by their current employer for 90 days or more, are ineligible for employment at the training wage with *that* employer. If such employees have been employed for less than 90 days, and the other requirements in part 517 for the first 90-day period are met, they are eligible to be paid the training wage by the employer (and any subsequent employers) until they have been employed a total of 90 days. The special transition rule does not preclude such a worker being employed at the training wage by a different employer for a second 90 days provided the requirements of 29 CFR part 517 with respect to the second 90-day period are met.

Subpart C—Employer Requirements

Subpart C sets forth the requirements applicable to employers who wish to use the training wage provisions. Certain employer requirements apply with respect to individuals employed at the training wage for an initial 90-day period and additional requirements apply with respect to individuals employed at the training wage for a second 90-day period.

The general employer requirements with respect to all employees paid at the training wage include ensuring that employees meet the eligibility requirements discussed above, furnishing all employees paid the training wage with a notice about the training wage to the affected employees (the text of which is provided in Appendix A to this Regulation), and not committing any of the prohibited acts relating to displacement of workers set forth in subpart E.

In addition, the Act provides that in any one month period, no more than one-fourth of the total hours worked by all employees in an establishment can be paid at the training wage. The hours of work for employees exempt from the Act's minimum wage and overtime pay provisions pursuant to 29 CFR part 541 (executive, administrative, professional, and outside sales employees), and for whom no actual records of hours worked are maintained, may be estimated at no more than 40 hours of work per workweek. This subpart makes clear that employers who exceed the monthly limit, without providing appropriate make-up pay, lose their eligibility for use of the training wage during the month in question unless the employer promptly, and no later than thirty days after the end of the month, pays the employees working at the training wage the difference between the training wage and the minimum wage for all hours worked in excess of the maximum hours limitation, prorated among the trainees in accordance with their hours worked during the month.

As stated above, employees paid the training wage during the second 90 days must be employed by a different employer and must be employed in a training program. Accordingly, requirements for the content of on-the-job training (as set forth in subpart D), and special posting, reporting and recordkeeping requirements apply with respect to the training program provided such employees.

Finally, this subpart provides that individuals employed in violation of any applicable Federal, State or local child labor law or ordinance are not eligible to be paid at the training wage during the workweek in which such violation occurs.

Subpart D—On-the-Job Training

Subpart D sets forth the specific on-the-job training requirements for employers who employ individuals at the training wage for a second 90-day

period. This section prescribes the basic training elements which must be included in any program of on-the-job training in order to qualify for the payment of the training wage to individuals during a second 90-day period. Such training must include elements of both personal skills that affect an individual's employability and satisfactory work adjustment to any job, and job-specific skills, to develop the skills and knowledge necessary for full and adequate performance of the specific job to be performed by the individual paid the training wage. Examples are given of both personal and job-specific training. However, the lists of examples are not intended to be exhaustive, nor is there any requirement that an employer provide any one of the specific examples listed.

Comments on this subpart are particularly invited.

Subpart E—Wage Conditions and Prohibitions

The Act prohibits employers from employing individuals at the training wage when any person has been laid off in the position for which the individual is being hired, or for any substantially equivalent position. Unlike prohibited displacements, discussed below, there is no requirement of any intent at the time of the layoff that the job would be filled with a training wage employee. However, this subpart provides that this prohibition applies only until the employer offers the laid off employee reemployment at the position otherwise expected to be filled by an individual at the training wage or at the position from which the employee was laid off. If the employer has been unable to locate the employee, the prohibition is lifted if the employer has made a good faith effort, such as by mailing a letter to the employee's last known address and checking the local phone book.

This subpart specifies the conditions under which prohibited layoffs will be deemed to occur, limiting the prohibition to the six months prior to the date on which the training wage employee is hired, and to the same geographic locality—defined to mean the geographic area from which the labor force is predominantly drawn. For example, if an employee has been laid off by a restaurant chain from one of its establishments in New York City, the employer would not be prohibited from hiring an employee at the training wage in an establishment in San Francisco, but would be prohibited from hiring a training wage employee for an equivalent position in Brooklyn. "Substantially equivalent position" is defined to mean a position in which the work is substantially similar in skill, qualifications and responsibility. In general, absent special qualifications, most unskilled minimum wage jobs will be considered to be substantially equivalent, but higher paid jobs would not. A rule of thumb criterion for determining substantial equivalency would be whether a laid off employee could reasonably be expected to perform the job in question.

Subpart E also sets forth the prohibitions against displacement of employees with the intention of employing the same or any other individual at the training wage. "Displacement" is defined to include any involuntary reduction or other change in hours, wages, benefits or conditions of employment which may be reasonably viewed as adversely affecting the employee, and examples are provided.

The subpart also sets forth the remedies to employees and to the Secretary for violations of the Act, including a provision that the Secretary will order the disqualification of any employer found to have unlawfully displaced employees from further use of the training wage. It should be noted that the Department does not interpret this provision as providing any relief for such employers.

Subpart F—Administrative Procedures

Subpart F sets forth the procedures for disqualification of employers from using the training wage provisions as a result of violations of the displacement prohibitions. If the administrative law judge, after a hearing, finds that a violation of the displacement provisions has occurred, an order shall be issued disqualifying the employer from further use of the training wage, effective the date of the violation. Discretionary review is available by the Secretary if a petition for review is filed by the employer or by the Secretary.

Executive Order 12291—Regulatory Impact Analysis for the Training Wage Provisions of the 1989 Fair Labor Standards Amendments

Introduction

This analysis will examine the cost implications of the training wage requirements. Since there are two training wage periods, referred to hereinafter as the first 90 day period, and the second 90 days period, the analysis must consider the sizes of the possible employee universes for each of these periods.

The Nature of the Youth Labor Market

Before describing the methodology used in this analysis, a definition of the age cohort involved and some fundamental characteristics of the youth labor market will be introduced. For the purposes of this analysis, youths (or teens) will be defined as those individuals between 16 and 19 years of age.

The participation of teens in the labor market is much more fluid than adult worker participation. By fluid, it is meant that teens move from one labor force status to another—employed, unemployed, not in the labor force—more readily and more frequently than adults. The net result of this is that a much larger percentage of teens actually work sometime during the course of any one year than is reflected by their labor force participation rate or employment to population ratio. For example, a teen may stop working and leave the labor force, perhaps to return to school, and then move from a status of not-in-the-labor-force to being employed again, without ever having been classified as unemployed.

Teens' tenure on any one particular job lasts, on average, only about three months. Those teens usually not in school, stay on a particular job approximately on average 9 months. Other teens in school work on average 1.5 to 2 months. And during the summer, teens work on average 3 months. By comparison, adult tenure at a particular job is much longer.

With these two characteristics of the youth labor force in mind, a different interpretation of the employment to population ratio statistic is required. While the national employment to population ratio for teens working at any one point in time is reported as 47.5%, it can be assumed that the fluidity of the teen workforce results in a higher employment to population ratio through the course of a year, estimated to be 66.7%, which will be referred to as *the adjusted employment to population ratio.* This higher ratio is obtained by adjusting downward from a ratio of 100% by the proportion of teen workers that have never worked by the time they reach 20 years old. Since the proportion of teens who report never working by age 20 is 33.3%, we can therefore assume that the adjusted employment to population ratio for teens is 66.7%.

We also know that the youth labor force consists primarily of part time workers. In fact, of all teens currently employed at less than $3.80 per hour, only 17.19% work full time, while 82.82% work part time. In addition, the average

weekly hours worked reported for teens is 25.8 hours.

(For references describing labor force characteristics of youth see "The Dynamics of Youth Unemployment", by Kim Clark and Lawrence Summers in *The Youth Labor Market Problem: Its Nature, Causes, and Consequences,* Richard B. Freeman, David A. Wise eds., University of Chicago Press, 1982. All employment to population ratios, labor force participation rates, and all other labor force statistics, are from the Current Population Survey data base of the Bureau of Labor Statistics.)

Methodology

To determine the cost savings to employers who use the training wage, estimates of the savings that result from the first 90 day period will be added to estimates of savings that result from the second 90 day period. In order to determine cost savings resulting from each period, estimates of the number of eligible employees actually paid at the training wage must be derived. The average weekly hours worked, average weeks per year worked, and the wage differential for training wage employees will be applied to the employee universe estimates to determine aggregate cost savings in the immediate period, as well as for the first year the training wage is in effect.

As a first step, the number of employees eligible for the training wage is estimated in two ways. The first scenario yields an upper limit estimate of the employee universe, while the second scenario yields a lower limit estimate.

Scenario 1: Derivation of the Upper Limit. The total population of teens 16 to 19 years old in 1989 was 14,537,000. Technically, all members of this group are eligible for the first 90 day training wage period to the extent that they have worked fewer than 90 days, and are employed as of April 1, 1990. However, it is unlikely that all of these teens will work, much less be paid at the training wage, so this number must be adjusted downwards.

Downward adjustments are made by subtracting from the total population number factors that are based on several phenomena and assumptions about the teen labor force. First, the number of teens who are exempt from the training wage provisions of the 1989 Amendments because they live in states with minimum wage rates of $3.80 or above must be subtracted from this total. The total teen population in these states is 2,814,000. (The states are Alaska, California, Connecticut, Hawaii, Iowa, Maine, Minnesota, Oregon, Rhode Island, Vermont, and Washington.)

As noted earlier, there is a segment of the teen population that will never enter into the labor force before reaching the age of twenty. Using the adjusted employment to population ratio described above, we have estimated this proportion to be roughly one third of all teens. Applying this proportion to the number of teens in states where employers can use the training wage yields 3,903,759 teens who will never work. This leaves 7,820,000 teens who are eligible for the first 90 day training wage period simply because of their age. This number represents the size of the maximum flow of teens into and out of the labor force during the first year of the training wage. In other words, during the course of a year, a maximum of 7,820,000 different teens will have, at some point, been employed at the training wage under the requirements of the first 90 day period. As an aside, this number overestimates eligible teens to the extent that some teens who work at some point before they are 20 do not work in the year in question.

The fact that some teens will already be employed on April 1st will reduce wage savings to employers not so much through reductions in the number of eligible teens as through reductions in the number of days that employers will be able to pay them the training wage rate. This factor is taken into consideration when the wage bill differential is computed.

Using the actual teen employment to population ratio of 47.5%, the number of teens employed at any one particular period in time at the training wage for the first 90 day period is approximately 3,714,500 and represents the number of teens that will be employed at the training wage when it becomes effective. This is a "stock" measure that represents the employment level at any one particular time and is very different from the "flow" measure derived from the adjusted employment to population ratio that describes teen employment over the course of a year.

Scenario 2: Derivation of the Lower Limit. In reality, other segments of these teens will not be paid at the training wage level for various other reasons. CPS data show that some teens do not report earning an hourly wage rate. This group contains the self-employed, volunteers, unpaid teens who work for family members and salaried workers. There are also some teens employed in occupations that are not covered by the minimum wage, and some teens employed in agriculture who are not eligible for the training wage. We estimate that approximately 10.13% of employed teens, or 376,279 teens, are in these two groups.

Approximately 44.2% of all employed teens are currently employed at or above $4.25 per hour. It is safe to assume that these teens will not work at a training wage level for either the first or second 90 day period because they have a high reservation wage. That is, teens in this group are probably older, have experience, are more skilled in job search techniques than younger teens, and will refuse to work if they are not paid at least $4.25 per hour. Furthermore, employers would probably view teens in this group as having enough experience to warrant a wage rate significantly higher than the training wage level.

Thus, with these adjustments, in addition to adjustments made in Scenario 1, the total number of teens 16 to 19 years old who will be eligible for the training wage *during the first year* is 4,456,450. Using the actual teen employment to population ratio of 47.5%, the number of teens employed at the training wage at any one particular period in time for the first 90 day period is approximately 2,116,814.

In sum, these two scenarios have given us upper and lower limits of two things; the number of teens already employed as of April 1, 1990

Scenario 1: 3,714,500 teens

Scenario 2: 2,116,814 teens

and the number of teens eligible during the first year of the training wage (annual teen flow).

Scenario 1: 7,820,000 teens

Scenario 2: 4,456,450 teens

Derivation of Wage Savings to Employers

The transition provision of these regulations stipulates that anyone who has been employed for 90 days or more as of April 1, 1990 cannot be paid the training wage rate. However, those teens employed for fewer than 90 days by April 1st can be employed at the training wage rate by their current employer for an additional number of days until such time as the employee has been employed by that employer for no more than 90 days at the training wage. Since the stock numbers represent those teens working as of April 1st, this transition provision will only affect the wage savings derived from this group of workers. In determining the wage savings, if, as before, we assume that teens work on average three months for any one employer, and we know that as of April 1st some teens will have been employed anywhere from one to 90 days, for simplicity's sake, we further

assume that teens employed on April 1st will have been employed with that employer, on average, 6.4 weeks—one half of the 90 day training period.

Recall that the training wage is a range with a minimum value of $3.35 per hour and a maximum value of $3.79 in the first year. Also, no employee may experience a wage decrease without changing employers. Therefore, in computing the wage savings employers will obtain from using the first 90 day period, wage distribution data are used.

Specifically, 16.0% of employed teens earn $3.35 per hour or less. As of April 1, 1990, we can assume that these teens will be paid at least $3.35 per hour until they have been employed a total of 90 days at that rate by that same employer. Wage rate savings will be based on the difference between the new statutory minimum wage, $3.80, and $3.35.

Similarly, another 14.8% of employed teens earn between $3.36 and $3.79 per hour. These teens can be kept at their current wage levels until they have been employed a total of 90 days at that rate by that same employer. Assuming a representative wage for this group of $3.58 per hour, wage rate savings will be based on the difference between the $3.80 minimum wage and the representative wage of $3.58.

If we then apply the average hours worked per year for teens employed as of April 1, 1990 (based on average weekly hours of 25.8 and average weeks worked per year of 6.4) to the percentage of teens employed at $3.35 and $3.58 and their respective differences from the new minimum wage, we can determine the cost savings for employers from the first 90 day training wage period for currently employed teens. This technique yields cost savings estimates from the upper limit stock value of $64,130,646 and from the lower limit stock value of $36,546,647. Thus, the range of wage savings to employers in the short run is between $36.5 and $64.1 million.

A similar procedure is used for determining the wage savings during the first year of the training wage provision except that the average weeks worked per year will be 12.9, which reflects use of the full 90 day period, and savings to employers from teens already employed as of April 1, 1990 are subtracted. Using the upper and lower limit flow values, the upper limit of cost savings will be $232,320,146. The lower limit of cost savings will be $132,394,412. Thus, the range of wage savings to employers in the first year is between $132.4 and $232.3 million.

	Scenario I	Scenario II	Midpoint
Immediate Effect	$64,130,646 ($64.1)	$36,546,647 ($36.5)	$50,338,647 ($50.3)
1st Year Effect	$232,320,146 ($232.3)	$132,394,412 ($132.4)	$182,357,279 ($182.4)

Cost Savings From the Second 90 Day Period

We assume that for employees, use of the training wage will be sequential: an employee will be employed at the training wage in accordance with requirements of the first 90 day period first, and will be employed in a training program for the second 90 day period only if he changes employers. We first make the modest assumption that all teens will work for at least 2 employers in the course of a year and by the time they work for the second employer, they have exhausted their eligibility under the first 90 day period. There are approximately 3,524,221 teens who will become ineligible for the second 90 day period because they turn twenty during the year. Subtracting this number from the total teens eligible "flow" number derived above leaves 4,295,779 as an upper limit using the assumptions under scenario 1, and 932,224 teens as a lower limit using assumptions under scenario 2.

However, although this is an estimate of the number of teens eligible for the second training wage period, it is unrealistic to assume that all of these teens will, in fact, be employed at the training wage for the second 90 day period. If we assume that only one fifth of the eligible teens will be employed under the second 90 day period, then the number of teens in training programs during the course of one year starting 90 days after April 1, 1990, will range between 186,445 and 859,156. The cost savings associated with these upper and lower limits are derived following the same procedure used above for determining wage bill savings *in the first year* from use of the first 90 day period. These savings range from $6,488,203 and $29,898,335 with a midpoint of $18,193,269 during the first year.

The reason actual employment under the second 90 day period will be less is due to the disincentive to employers to use this second training period imposed by the statute. Many employers who could otherwise utilize the training wage will not do so because they do not want to create a training program. While it is safe to assume that only some small percentage of employers will actually develop training programs and that large firms are more likely to develop them than small firms, we cannot profess to be able to link employers who will actually use this second training wage period with the number of job slots that will be filled with this type of trainee.

Total Wage Savings

Total wage savings in the immediate period will be achieved by use of the first 90 day period. Total savings for the first year will be determined by adding savings for the year from the first 90 day period to those savings for the year from the second 90 day period. Thus, wage savings achieved in the immediate period are between $36.5 and $64.1 million. The total wage savings in the first year are between $138.9 and $262.2 million.

If we just use the midpoints of these ranges, immediate savings will be approximately $50.3 million and savings over the first year will be $200.6 million.

	Scenario I	Scenario II	Midpoint
Immediate Effect	$64,130,646 ($64.1)	$36,546,647 ($36.5)	$50,338,647 ($50.3)
1st Year Effect	$262,218,481 ($262.2)	$138,882,615 ($138.9)	$200,550,548 ($200.6)

Preliminary Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires agencies to prepare regulatory flexibility analyses, and to develop alternatives whenever possible, in drafting regulations that will have "a significant economic impact on a substantial number of small entities." The following analysis assesses the impact of these regulations on small entities as required by the law.

(1) Reasons Why Action by Agency is Being Considered. The 1989 Amendments to the Fair Labor Standards Act were enacted into law on November 17, 1989. These Amendments include new provisions for covered employers which permit them, under certain conditions, to pay workers under the age of 20 a training wage of at least 85 percent of the otherwise applicable minimum wage under the FLSA, but not less than $3.35 per hour, whichever is greater. The Amendments add to the Secretary of Labor's general authority to issue regulations by directing the Secretary to issue regulations setting forth minimum standards for training provided to workers employed by a different employer at the training wage for an additional period of 90 days. In addition, the Amendments require the Secretary to issue rules on what constitutes proof of prior employment for purposes of determining eligibility for the training wage. Since the training wage provisions are effective April 1, 1990, the Department of Labor is issuing these regulations on an interim final basis.

(2) Objectives of and Legal Basis for Rule. These regulations are authorized by the 1989 Amendments to the FLSA. Their objective is to set forth standards and interpretations to enable employers to comply with the training wage provisions of the FLSA, and to advise employees of their rights under these provisions of the law.

(3) Number of Small Entities Covered Under Rule. Approximately 3.6 million employers are covered by the FLSA, and many, if not the majority, would be classified as small entities.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule. The interim final rule contains recordkeeping and reporting requirements for employers who wish to avail themselves of the training wage provisions of the 1989 Amendments to the FLSA.

These requirements are imposed by the statute itself, or are necessary for enforcement of the trair ing wage provision.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule. There is no duplication of the existing Wage and Hour Division requirements, nor are any similar requirements imposed by any other Federal agency.

(6) Differing Compliance and Recordkeeping Requirements. The language set forth in this interim final regulation closely adheres to the requirements imposed by the 1989 FLSA Amendments and accompanying legislative history. The burdens imposed by these requirements on employers are those imposed by statute, and those necessary to enforce the statute.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements. As noted above, the compliance and reporting requirements in this interim final rule are those imposed by statute, and those necessary to determine compliance with the Act. No specific format for the recordkeeping requirements is necessary.

Employers are permitted to use any recordkeeping format that meets these enforcement and compliance needs.

(8) Use of Other Standards. Appropriate alternative standards that would impose fewer regulatory burdens on covered employers, especially small entities, are not available.

(9) Exemptions of Small Entities from Coverage of the Rule. Except for these small business establishments and classes of employers expressly exempted in the statute from one or more of the Act's requirements, a general exemption from the requirements of the interim final rule for small entities is not permitted by the provisions of the 1989 FLSA Amendments.

Publication as an Interim Final Rule

The Secretary has determined that the public interest requires the immediate issuance of these interim final regulations in order to comply with the requirement in the 1989 FLSA Amendments that rules be issued to implement the training wage provisions which are effective April 1, 1990. In sufficient time existed since the enactment of the Amendments for the Department to issue a proposal for comments, review the comments, and promulgate a final rule to be effective April 1, 1990.

The failure to have this rule in place prior to April 1, 1990, would preclude employers from utilizing the training wage provisions of the Amendments.

Accordingly, the Secretary for good cause finds that, pursuant to 5 U.S.C. 553(b)(3)(B), prior notice and public comment are impracticable and contrary to the public interest. However, interested persons are invited to submit comments on this regulation by April 30, 1990. Following evaluation of the comments received, a further proposal or a final regulation, modified as necessary, will be published.

This document was prepared under the direction and control of Nancy M. Flynn, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 517

Employment, Investigations, Labor, Law enforcement, Training.

Signed at Washington, DC, on this 27th day of February 1990.

Elizabeth Dole,

Secretary of Labor.

William C. Brooks,

Assistant Secretary for Employment Standards.

Nancy M. Flynn,

Acting Administrator, Wage and Hour Division.

Accordingly, title 29, chapter V, subchapter A, of the Code of Federal Regulations is amended by adding a new part 517 to read as follows:

PART 517—TRAINING WAGE PROVISIONS OF THE FAIR LABOR STANDARDS AMENDMENTS OF 1989

Subpart A—General

Sec.

Subpart B—Employee Eligibility Requirements

Subpart C—Employer Requirements

Subpart D—On-the-Job Training

Authority: Sec. 6, Pub. L. 101–157, 103 Stat. 938; 29 U.S.C. 201 *et seq.*

SUBPART A—GENERAL

§ 517.1 Summary.

(a) The Fair Labor Standards Amendments of 1989 (Public Law 101–157) were enacted into law on November 17, 1989. Among other provisions, these amendments to the Fair Labor Standards Act (FLSA) increase the minimum wage in section 6(a)(1) from $3.35 an hour to $3.80 an hour on April 1, 1990, and to $4.25 an hour on April 1, 1991; establish a training wage; and change certain provisions relating to coverage, exemptions, tip credit, and enforcement under the Act.

(b) Sec. 6 of the Amendments permits employers under certain conditions to pay employees under the age of 20 a wage rate of at least 85 percent of the minimum wage prescribed by Section 6(a)(1) of the FLSA (but not less than $3.35 per hour) for up to 90 days. An employee who has been paid the training wage for 90 days also may be employed at the training wage for 90 additional days by different employer(s) if such employer(s) provide(s) on-the-job training in accordance with criteria established by the Secretary of Labor.

§ 517.2 Purpose and scope of regulations.

The purpose of this part is to set forth regulations on the training wage provisions of section 6 of the Amendments to the FLSA. The regulations in this part are divided into six subparts. Subpart A contains provisions that generally pertain to a training wage for eligible workers, including definitions relating to the training wage provisions. Subpart B sets forth rules regarding employees who are eligible for the training wage. Subpart C sets forth the requirements for employer eligibility for the employment of workers at the training wage during the first and second 90-day periods. Subpart D sets forth the criteria which on-the-job training programs must meet for employers to qualify to pay the training wage for the second 90-day period. Subpart E sets forth the prohibitions against displacement of employees (including reductions in hours worked, wages, or employment benefits). Subpart F contains the administrative proceedings for disqualifying employers who have violated the displacement prohibitions from using the training wage.

§ 517.3 Statutory effective and expiration dates of the training wage provisions.

Pursuant to section 6(b) of the amendments, authorization to employ eligible employees at the training wage for the designated periods begins on April 1, 1990, and expires March 31, 1993.

§ 517.4 Training wage rates.

(a) Effective April 1, 1990, the training wage shall be not less than $3.35 an hour.

(b) Effective April 1, 1991, the training wage shall be not less than $3.35 an hour or 85 percent of the wage prescribed by section 6 of the FLSA, *whichever is greater,* for the period ending March 31, 1993. Thus, for employers subject to the minimum wage of $4.25 per hour under section 6(a)(1) of the Act beginning April 1, 1991, the training wage shall be not less than $3.6125 per hour (which, if rounded, must be rounded up to $3.62 per hour).

(c) Different minimum wage rates, and thus different training wage rates apply in American Samoa and Puerto Rico. However, in no event may anyone lawfully be paid a training wage of less than $3.35 per hour, including employees in American Samoa and Puerto Rico.

(d) Under no circumstances may an employer simultaneously employ an individual under both the training wage provisions and the special minimum wage provisions in FLSA section 14 (which provide for employment at wages lower than the section 6(a)(1) minimum under certain circumstances).

§ 517.5 Definitions.

For purposes of this part:

(a) *Act* or *FLSA* means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, *et seq.*).

(b) *Amendments* or *1989 Amendments* means the Fair Labor Standards Amendments of 1989 (Pub. L. 101–157).

(c) *Secretary* means the Secretary of Labor, or a duly authorized representative of the Secretary.

(d) *Administrator* means the Administrator of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor, or a duly authorized representative of the Administrator.

(e) *Establishment* means a distinct physical place of business. The term is not synonymous with the words "business" or "enterprise" when those terms are used to describe multi-unit operations.

(f) *Employer* includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(g) *Employee* means any individual employed by an employer, except for those types of individuals excluded by Sec. 3(e), paragraphs (2), (3), and (4), of the FLSA.

(h) *Workweek* means a fixed and regulatory recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked by that employee. The beginning of the workweek may be changed only if the change is intended to be permanent and is not designed to evade the requirements of the FLSA.

(i) *Ninety Days* or *90 Days* means a total of 90 calendar days in an employment status with one or more employers. Employment status includes

the period from the first day after an employee is hired on which the employee performs work, until the employee's termination of employment with the employer, irrespective of the number of hours, days or weeks during such period that the employee actually performs work, but does not include any break of service with an employer (e.g., bona fide layoffs). Normal work absences, such as weekends, holidays, sick or annual leave, do not constitute a break in service.

(j) *On-the-job training* means training that is offered to an individual while employed in productive work that provides training, technical and other related skills, and personal skills that are essential to the full and adequate performance of such employment.

(k) *Migrant agricultural worker* and *seasonal agricultural worker* are defined in accordance with paragraphs (8) and (10) of sec. 3 of the Migrant and Seasonal Agricultural Worker Protection Act [29 U.S.C. 1802 (8) and (10)] (as amplified in the regulations issued thereunder at 29 CFR 500.20), without regard to subparagraph (B) of such paragraphs, as follows:

(1) A *migrant agricultural worker* is an individual who is employed in agricultural employment of a seasonal or other temporary nature and is required to be absent overnight from his or her permanent place of residence;

(2) A *seasonal agricultural worker* is an individual who is employed in agricultural employment of a seasonal or other temporary nature and is *not* required to be absent overnight from his or her permanent place of residence—

(i) When employed on a farm or ranch performing field work related to planting, cultivating, or harvesting operations; or

(ii) When employed in canning, packing, ginning, seed conditioning or related research, or processing operations, and transported, or caused to be transported, to or from the place of employment by means of a day-haul operation.

(l) *Temporary nonimmigrant agricultural worker* means an alien, admitted to the United States under 8 U.S.C. 1101(a)(15)(H)(ii)(a), having a residence in a foreign country which he or she has no intention of abandoning who has come temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in 20 CFR 655.100(c), of a temporary or seasonal nature.

Subpart B—Employee Eligibility Requirements

§ 517.100 General.

(a) An employee is eligible to be paid the training wage, for the period(s) described in § 517.101, if such employee—

(1) Has not reached 20 years of age;

(2) Is not a migrant agricultural worker or a seasonal agricultural worker;

(3) Is not a temporary nonimmigrant agricultural worker.

(b) Individuals become ineligible for the training wage on the date on which they become 20 years of age, and, as of that date, they must receive not less than the minimum wage otherwise applicable under the FLSA.

(c) Individuals are not eligible to be paid the training wage in any workweek in which they are employed in industries or occupations in which they cannot be employed legally because of their age as a result of any Federal, State or local child labor law or ordinance or any regulation or hazardous occupation order issued pursuant to such law or ordinance. Similarly, individuals are not eligible to be paid the training wage in any workweek in which hours are worked which are impermissible under such laws, ordinances or regulations. See § 517.207.

§ 517.101 Duration.

(a) An employee is initially eligible to be paid the training wage until the employee has been employed by one or more employers a cumulative total of 90 days at such wage.

(b) An employee who has been employed at the training wage for 90 cumulative days may be employed by one or more *other* employers for an additional cumulative 90 days if such employer(s) meet(s) the requirements listed in § 517.202 below.

(c) The total period that an employee may be employed at the training wage by any combination of employers may not exceed a cumulative total of 180 days.

(d) Special rules apply to individuals who are employed by an employer on April 1, 1990, or who were employed by an employer on or after March 1, 1990, and who thereafter were laid off on or before April 1, 1990, but are subsequently rehired by that employer:

(1) Individuals who, as of April 1, 1990, have been employed by their current employer for at least 90 days are ineligible for employment at the training wage by such employer.

(2) Individuals who, as of April 1, 1990, have been employed by their current employer for less than 90 days are eligible for employment at the training wage with such employer until they have been employed for a total of 90 days by their current and any subsequent employer. Such employment is subject to all the requirements of this Part with respect to employment at the training wage for the first 90 days.

(3) Individuals ineligible for employment at the training wage by their current employer by virtue of paragraphs (d)(1) or (2) of this section are eligible to be hired for an additional 90 days at the training wage by a different employer provided all the requirements of this Part with respect to employment at the training wage for a second 90 days are met.

§ 517.102 Proof of age required.

An individual may be employed at the training wage only upon presentation to the employer of documentary evidence of age under 20. Acceptable types of documentation include the following:

(a) A birth certificate or similar official statement of the recorded date and place of birth;

(b) A Federal certificate of age;

(c) A State certificate of age (sometimes known as an age, employment or working certificate or permit);

(d) A baptismal record which shows the date of birth;

(e) A driver's license;

(f) A passport, or certificate of arrival in the United States issued by the U.S. Immigration and Naturalization Service (INS), or any other document reviewed by an employer to establish identity of employment eligibility in completing INS Form I–9, provided such document contains the person's date of birth;

(g) A school record of age;

(h) A physician's certificate of physical age of the individual;

(i) A signed statement by a parent or guardian.

§ 517.103 Proof of eligibility for employment at the training wage.

(a) *First 90 days of eligibility.* An individual under the age of 20 who is to be employed at the training wage must provide written proof, as specified below, to the employer that he or she has been previously employed at such wage for fewer than 90 days.

(b) *Second 90 days of eligibility.* An individual under the age of 20 who has been employed at the training wage for 90 days and who is to be employed by one or more different employers for an additional 90 days, must provide written proof to the employer(s) of any previous period(s) of employment at the training wage by other employers.

(C) *Nature of proof.* In view of the special rules for current employees set forth in § 517.101(d), the written proof of prior employment shall include any employment on or after January 1, 1990. Where the individual has had no such previous employment, the written proof shall consist of a signed statement to that effect. Where the individual has been previously employed since January 1, 1990, the written proof shall consist of a signed, accurate list prepared by the individual of all of his or her prior employers, the starting and ending dates of employment with each employer, and the wage rate(s) paid. A signed job application form with all the required information accurately entered will meet this requirement. Such written proof shall be retained by the employer for a period of three years from the date such proof is furnished to the employer.

§ 517.104 Good faith defense.

Information furnished to the employer pursuant to § 517.103 may be relied on in determining whether an individual is eligible for employment at the training wage. Absent any attempt at evasion or coercion by the employer, a violation of the FLSA with respect to employee eligibility shall not be deemed to exist by virtue of the employment of any person at the training wage for whom the employer has on file the documentation of evidence of such individual's age, or a notation as to the nature of the evidence of date of birth provided by the individual, and, as appropriate, a signed list provided by the individual of previous employers, which shows the starting and ending dates of employment with each employer and the wage rate(s) paid, or a signed statement to the effect that the individual was not previously employed at the training wage, provided such documents indicate compliance with the employee eligibility requirements of this subpart.

Subpart C—Employer Requirements

§ 517.200 General.

(a) Employers covered by the FLSA are eligible to employ workers at the training wage provided they meet the requirements of this part. The requirements differ with respect to workers employed at the training wage for their first 90 days and workers employed at the training wage for a second 90-day period by a different employer.

(b) For the sole purpose of determining whether an individual has been employed by an employer for 90 days, the term "employer" means an employer who is required to withhold payroll taxes for such employee. For all other purposes, the term "employer" shall have the meaning set forth in section 3(d) of the FLSA and § 517.5(f) of these regulations.

§ 517.201 First 90-day period.

To be eligible to employ a worker during his or her first 90 days of employment at the training wage, an employer must:

(a) Ensure that the worker meets the eligibility requirements set forth in subpart B;

(b) Provide the worker with a copy of the notice as required by § 517.205;

(c) Comply with the restrictions on the maximum number of hours that can be paid at the training wage set forth in § 517.203; and

(d) Not commit any of the prohibited acts related to the displacement of workers set forth in subpart E.

It should be noted that the Amendments do not impose any specific training requirements for individuals during their first 90-day period of employment at the training wage.

§ 517.202 Second 90-day period.

In addition to meeting all the requirements in § 517.201, an employer wishing to employ a worker during his or her second 90-day period of employment at the training wage must:

(a) Not have employed the worker during any part of his or her first 90 days of employment at the training wage;

(b) Prepare in writing and retain a training program that outlines the on-the-job training provided workers so employed in accordance with subpart D;

(c) Furnish a copy of the training program to each worker;

(d) Provide training to each worker in accordance with such training program;

(e) Post in a conspicuous place in the establishment(s) in which such workers are employed a notice of the types of jobs for which on-the-job training is being provided pursuant to these regulations (as required by § 517.206(g)); and

(f) Furnish a copy of such notice annually to the Department of Labor (as required by § 517.206(h)).

§ 517.203 Maximum hours per month.

(a) As a condition of using the training wage provisions (both the first and second 90-day periods), § 6(d)(1) of the 1989 Amendments provides that during any month in which employees are employed in an establishment at the training wage, the hours of work for such employees may not exceed a proportion equal to one-fourth of the total hours worked by all employees in that establishment.

(b) In determining the hours worked by all employees of the establishment, the hours worked by full-time "executive, administrative, professional, and outside sales employees" (as these terms are defined and delimited in 29 CFR part 541), who are exempt from the Act's minimum wage and overtime pay provisions under FLSA section 13(a)(1) (and thus from certain recordkeeping requirements in 29 CFR part 516), may be estimated at no more than 40 hours per workweek where no record exists of the actual hours worked by such individuals.

(c) As alternatives to using calendar months in making the calculations, employers may designate a "fiscal month" system, consisting of consecutive 30-day periods, or a "four-workweek" system, consisting of four consecutive seven-day periods or two consecutive 14-day periods. However, where an alternative is selected it must be intended to be permanent, and the alternative selected must be continued in use until such time as no employees have been employed at the training wage for at least thirty days.

§ 517.204 Maximum hours exceeded.

(a) It is the employer's responsibility to ensure that the total number of hours paid at the training wage does not exceed the statutory limitation of one-quarter of the total hours worked by all employees in the establishment. Employers using this provision, therefore, must closely monitor the hours worked by all employees, and not only those paid at the training wage, to avoid any violation of this limit.

(b)(1) If, at the end of a given month (or other period allowable under § 517.203(c)), the number of hours worked by employees paid at the training wage exceeds one-quarter of the total hours worked by all employees at the establishment, the Administrator will not assert the illegality of the use of the training wage for that month if, but only if, the employer promptly pays the difference between the training wage and the minimum wage prescribed by sec. 6(a) of the FLSA for all hours which had been worked and paid at the training wage in excess of the 25% limitation. For purposes of the previous sentence the word "promptly" means no later than 30 days after the last day of the month in question. Once the total amount of additional wages due to make such payment is determined, the total must be prorated among all the employees paid at the training wage during that month based on the number of hours worked by each employee.

(2) For example, assume an employer has two employees paid at a training wage of $3.35 per hour, one of whom works 10 hours per week and the other of whom works 30 hours per week. In addition, the employer employs three full-time employees at or above the FLSA's minimum wage ($3.80 in this example). One of the full-time employees quits towards the end of a given month. Assume that the training wage employees together worked 160 hours and the other employees all together worked 432 hours, so that the total hours worked in the establishment are 592. Thus, employer finds that the number of hours paid at the training wage exceeds one-fourth of the total hours worked by all employees by 12 hours in that month. (25% of 592 = 148. 160 − 148 = 12.) Technically, all hours compensated at $3.35 per hour have been under-compensated. However, no violation will be asserted by the Administrator for that month if the employer promptly pays the total of $5.40 in additional wages due ($3.80 − $3.35 × 12 hours). The trainee who worked 10 of the total 40 hours per week paid at the training wage would be paid an additional $1.35 (10/40 × $5.40), and the trainee who worked 30 of the 40 total hours per week paid at the training wage would be paid an additional $4.05 (30/40 × $5.40). It should be noted that the payment of such make-up pay has no effect on an employee's 90-day period of eligibility for the training wage.

(3) There may be occasions where the 25% limitation is exceeded and employees are paid varying training wage rates. In such situations it will not be possible to simply determine the total amount of back wages due and then prorate that amount among the employees involved. Rather, it will be necessary in such cases first to determine each employee's pro rata share of the hours that exceed the 25% limitation and then multiply that number by the difference between the minimum wage and the employee's training wage. For example, assume the same facts as in the example in paragraph (b)(2) of this section, except that the employee who worked 10 hours was paid $3.50 per hour instead of $3.35 per hour. That employee would be due 10/40 × 12 × $.30 ($3.80 − $3.50) = $.90. The other employee would be due 30/40 × 12 × $.45 ($3.80 − $3.35) = $4.05. The employer would owe a total of $4.95.

§ 517.205 Notice to employees paid at the training wage.

(a) Sec. 6(e) of the 1989 Amendments requires that employers provide a written notice to each employee who is to be paid at the training wage before the employee begins employment at the training wage. The notice must state the requirements of the training wage provisions and the statutory remedies available for violations.

(b) The Secretary is required by the Amendments to furnish the text of this notice to employers, and the text is set forth in Appendix A to this part. No particular form for the notice is required, and it may consist of a handwritten copy, typed copy, or photocopy of Appendix A. However, the text of the notice provided must be legible and identical to the text of Appendix A (or an accurate translation thereof) with no additions or deletions.

§ 517.206 Posting, reporting and recordkeeping requirements for the second 90-day period of eligibility.

(a) As required by sec. 6(h) of the Amendments and as discussed in § 517.202, employers wishing to employ individuals for any portion of a second 90-day period of employment at the training wage must prepare in writing a training program setting forth the on-the-job-training to be provided such individuals.

(b) No particular format for the written training program discussed in paragraph (a) of this section is required. However, the training program must meet all of the requirements in subpart D.

(c) It is anticipated that the training program may be revised from time to time and that new training programs may be developed for new employees or new positions.

(d) A copy of the applicable written training program must be furnished any job applicant hired for employment at the training wage during any portion of his or her second 90-day period of eligibility for such wage.

(e) The employer must retain the original or a copy of the training program(s), including any revisions, for two years after the last day on which an individual was employed at the training wage pursuant to such training program(s).

(f) Section 6(h)(1) of the Amendments provides that any employer who wishes to employ any individual at the training wage during their second 90-day period of eligibility, must notify the Secretary annually of the positions at which such employees are to be employed at such wage. The Department will accept as compliance with this provision the employer's compliance with the reporting requirements set forth in paragraphs (g) and (h) of this section.

(g) Section 6(h)(5) of the Amendments requires that any employer who wishes to employ any individuals at the training wage during their second 90-day period of eligibility, post in a conspicuous place a notice of the types of positions for which the employer is providing on-the-job training. The notice must include a listing of all positions (vacant or filled) in the establishment in which workers are already employed in the training program or for which they may be hired. The Amendments do not require that the wage rates actually paid or offered to be paid be identified for such positions in the notice. No employer may hire any worker at the training wage during any portion of his or her second 90-day period of eligibility for employment at the training wage, unless the type of position to be occupied is identified on the posted notice.

(h) Section 6(h)(6) of the Amendments requires that employers send a copy of the notice in paragraph (g) of this section to the Secretary on an annual basis. Provided that the employer complies with the requirements in paragraph (g) of this section, the requirements of paragraph (f) and this section may be simultaneously met as follows: Prior to employing individuals at the training wage during any portion of their second 90-day period of eligibility, and on an annual basis thereafter, the employer must advise the Department of Labor in writing of the intention to employ or continue to employ such individuals at the training wage, identify the names and addresses of the establishments where such individuals are or will be employed, and include in such correspondence a copy of the notice required by paragraph (g) of this section. Such correspondence should be directed to:

Regional Director, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

The lower left hand corner of the envelope should state: "Training Wage Report." This correspondence should be mailed to the appropriate address from the list that follows:

Region I—Boston (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)
JFK Federal Building, Government Center, Room 1612C, Boston, Massachusetts 02203

Region II—New York (New Jersey, New York, Puerto Rico, Virgin Islands)
201 Varick Street, Room 750, New York, New York 10014

Region III—Philadelphia (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

Gateway Building, Room 15210, 3535 Market Street, Philadelphia, Pennsylvania 19104

Region IV—Atlanta (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)
1375 Peachtree Street, NE., Room 662, Atlanta, Georgia 30367

Region V—Chicago (Illinois, Indiana, Michigan, Minnesota, Ohio, Wiconsin)
230 South Dearborn Street, Room 562–A, Chicago, Illinois 60604–1591

Region VI—Dallas (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)
Federal Building, Room 858, 525 Griffin Street, Dallas, Texas 75202

Region VII—Kansas City (Iowa, Kansas, Missouri, Nebraska)
Federal Office Building, Room 2000, 911 Walnut Street, Kansas City, Missouri 64106

Region VIII—Denver (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
Federal Office Building, Room 1490, 1961 Stout Street, Denver, Colorado 80294

Region IX—San Francisco (Arizona, California, Hawaii, Nevada, Guam, American Samoa)
71 Stevenson Street, Suite 905, San Francisco, California 94105

Region X—Seattle (Alaska, Idaho, Oregon, Washington)
1111 Third Avenue, Suite 600, Seattle, Washington 98101–3212

Where employers intend to employ individuals at the training wage in establishments located in the jurisdiction of more than one Regional Office, the information for all such establishments should be sent to the Regional Director whose jurisdiction includes the location of the employer's main office or corporate headquarters.

§ 517.207 Child labor restrictions.

(a) Employment which violates Federal, State, or local child labor laws or ordinances is not eligible for the training wage provisions. For example, under the statute itself and regulations promulgated under the FLSA, certain non-agricultural occupations are prohibited for minors who are less than 18 years of age. (See 29 CFR part 570, subpart E.) In addition, Child Labor Regulation No. 3 (29 CFR part 570, Subpart C) sets forth the permissible industries and occupations in which 14- and 15-year olds may be employed under conditions which do not interfere with their schooling, health, or well-being, as required by section 3(1) of the FLSA. Child Labor Regulation No. 3 also specifies the number of hours in a day and in a week, and the time periods within a day that such minors may be employed in compliance with the FLSA.

(b) During any workweek in which a minor is employed in violation of any Federal, State, or local child labor restriction, that minor may not be paid less than the full minimum wage set forth in section 6(a) of the FLSA for any hours worked.

(c) Violations of these child labor provisions (or any other applicable child labor restrictions prescribed by Federal, State or local law or ordinance) are subject to the remedies in sections 16 and 17 of the FLSA with respect to back wages (i.e., the difference between the training wage and the applicable statutory minimum wage in section 6 of the FLSA), as well as civil money penalties under the FLSA and regulations issued pursuant thereto.

Subpart D—On-the-job Training

§ 517.300 On-the-job training.

(a) Section 6(h)(2) of the 1989 Amendments provides that in order for an employer to pay the training wage to an individual during any portion of his or her second 90-day period, in addition to meeting all the other statutory requirements as set forth in this Part, on-the-job training must be provided which meets the general criteria contained in regulations issued by the Secretary.

(b) As required by sec. 6(h)(3) of the Amendments, the on-the-job training program must be in writing and a copy retained in accordance with § 517.206 of this Part. In addition, as set forth in § 517.206, section 6(h)(4) of the Amendments requires that a copy of the training program be furnished to each employee who is to be employed at the training wage in a position to which it applies.

(c) In order to qualify as bona fide training under this provision of law, an on-the-job training program must provide for the development of job-specific skills and personal skills.

(1) Job-specific training means development of skills and knowledge necessary for full and adequate performance of the specific job to be performed by the individual paid the training wage. The training shall provide knowledge and skills beyond those customarily learned by observation and incidental work exposure. The kinds of job activities for which on-the-job training is appropriate are too numerous and varied to permit an exhaustive lisiting. Examples of the types of job-related skills and knowledge for which such training could be provided include:

(i) Telephone techniques such as answering phones, responding to questions, taking messages;

(ii) Office etiquette and interpersonal skills, such as office relationships, handling of customers or visitors;

(iii) Skills such as typing, proofreading, copying, ordering—stocking—inventorying of supplies and equipment, computer keyboarding;

(iv) Operation of a cash register and making change;

(v) Opening and closing of a store or establishment;

(vi) Preparation and cooking of food;

(vii) Packaging of products for serving, delivery, shipping, etc.;

(viii) Cleaning or maintenance of building or office space and equipment; and

(ix) Familiarity with and use of set-up procedures, safety measures, work-related terminology, recordkeeping and paperwork formats, tools, equipment and materials, and breakdown and clean-up routines.

(2) Personal skills are skills other than specific job-related skills that affect an individual's employability and satisfactory work adjustment to any job. Examples of such skills include:

(i) Courteous behavior;

(ii) Customer relations/service;

(iii) Punctuality;

(iv) Oral and, where appropriate, written communications skills, reading and arithmetic, listening skills, and problem-solving skills;

(v) Personal hygiene, grooming, neatness, and appearance;

(vi) Appropriate dress;

(vii) Taking responsibility for one's work;

(viii) Finishing assigned tasks;

(ix) Taking direction and following instructions;

(x) Regular work attendance;

(xi) Cooperation/teamwork;

(xii) Personal management (self esteem, goal setting, motivation, personal and career development);

(xiii) Positive work habits, attitudes, and behavior;

(xiv) Substance abuse prevention training; and

(xv) Safety and health training.

(d) Nothing in this regulation shall be construed to require any employer to provide training in any particular one of the specific activities identified in (c) of this section.

(e) It is recognized that not all of the job specific skills acquired in the training program may be immediately applicable to the current position the employee occupies. Any additional skills which the employer wishes to teach should be applicable to other positions in the firm for which the individual may later qualify. For example, a grocery stockperson may receive training in the operation of a cash register, a messenger may receive training in computer keyboarding, or a

shipping packer may receive training in operation of a fork-lift truck (provided, in accordance with Hazardous Occupations Order No. 7 (29 CFR 570.58, the packer is not under 18 years of age). Nothing in this subpart would preclude an employer from including training in such skills in the on-the-job training program.

(f) The training program must specify the job(s) covered by the plan, provide for planned instruction and include a schedule for the completion of the training program covering specific skills necessary for the particular job for which the individual is being trained, personal skills, and any additional skills for which training will be provided. In addition, the training program must provide for some kind of oral or written review of an employee's performance. As prescribed in section 6(a)(1) (B) of the Amendments, payment of the training wage is permitted in the second 90-day period only while the employee is engaged in on-the-job training.

(g) Nothing in this subpart precludes an employer from developing a training program which is based on a period longer than 90 days, so long as the training provided for the 90-day period complies with the requirements stated above, and any hours worked after the 90-day (maximum) period are compensated at not less than the minimum wage otherwise required by the FLSA. Also, an existing training program that is generally utilized may be used for training wage employees provided all other requirements in this part are met.

Subpart E—Wage Conditions and Prohibitions

§ 517.400 Prohibited actions.

Employers are prohibited by the Act from employing any individual at the training wage when any other employee has been laid off from the position to be filled at the training wage, or from any substantially equivalent position. Employers are also prohibited from displacing employees for purposes of employing individuals at the training wage. If an employer has unlawfully displaced any employee for such purpose, that employer shall thereafter be disqualified from employing any individuals at the training wage.

§ 517.401 Prohibited layoffs.

(a) No person may be hired for any position at the training wage if, in the previous six months, the employer has laid off any employee (including an employee paid the training wage) from the position to be filled at the training age, or from any substantially equivalent position in the same locality. This prohibition shall apply unless and until the employer offers the laid off employee(s) employment in the position which the employer proposes to fill at the training wage, or in the position from which the layoff took place; or if the employer has been unable to locate the laid-off employee(s), until the employer makes a good faith effort to locate such employee(s).

(b) For purposes of this subsection, "layoff" shall mean any involuntary temporary or permanent discontinuance of an employee's employment for reasons not related to the employee's conduct or performance on the job.

(c) For purposes of this subsection, "locality" shall mean the geographic area from which the labor force of the community is predominantly drawn.

(d) For purposes of this subsection, "substantially equivalent position" shall mean a position in which the work is substantially similar in terms of skill, qualifications and responsibility.

§ 517.402 Prohibited displacements.

(a) No employer may terminate any employee (including any employee paid the training wage) or otherwise reduce the number of employees with the intention of filling the vacancy with an employee to be paid the training wage. Furthermore, no employer may take any action to displace any employee (including any employee paid the training wage) for purposes of employing the same employee or any other individual at the training wage, whether or not such displacement creates a vacancy to be filled by such individual.

(b) For purposes of this subsection, "displacement" shall mean a discharge, or any reduction or other change in an employee's hours, wages, benefits or other conditions of employment which may be reasonably viewed as having an adverse effect on the employee.

(c) Examples of prohibited displacements include (but are not limited to) the following:

(1) Termination of employment;

(2) Reduction in wages or benefits;

(3) Reduction in hours of employment;

(4) Demotion;

(5) Reassignment, whether within one establishment or from one establishment to another;

(6) Change in working hours, days or shifts;

(7) Adverse change in established employment practices, such as annual bonuses, wage increases, or promotional opportunities.

§ 517.403 Disqualification and enforcement.

(a) Any employer who violates the provision of this subpart shall be considered to have violated section 15(a)(3) of the Fair Labor Standards Act.

(b) Whenever the Secretary determines that an employer has taken any action to displace employees for purposes of employing individuals at the training wage, the Secretary shall issue an order disqualifying such employer from employing any individual at the training wage.

(c) Employees who are laid off or displaced in violation of section 6 (c) or (d) of the 1989 Amendments may bring an action under section 16(b) of the Act for the payment of wages lost and an additional amount as liquidated damages, and other such legal and equitable relief as may be appropriate, including without limitation employment, reinstatement, or promotion.

(d) Employees who are paid the training wage in violation of the conditions or other requirements of the 1989 Amendments, including the layoff and displacement provisions of sections 6(c), and 6(d)(2)(A), may bring an action under section 16(b) of the Act to recover unpaid minimum wages and unpaid overtime compensation, and an additional amount as liquidated damages.

(e) The Secretary may bring action under section 16(c) or section 17 for such legal or equitable relief as may be appropriate, including relief with respect to employees who are laid off or displaced in violation of the 1989 Amendments, as well as employees who are paid the training wage in violation of the conditions or other requirements set forth in this part.

Subpart F—Administrative Proceedings

General

§ 517.500 Applicability of procedures and rules.

The procedures and rules contained in this subpart prescribe the administrative process for disqualification of an employer from employment of an individual eligible for the training wage when the employer has violated the provisions of section 6(d)(2)(A) of the 1989 Amendments, as set forth in § 517.402 of this part.

Procedures Relating to Hearing

§ 517.501 Written notice of determination required.

Whenever the Administrator determines, on the basis of evidence

resulting from an investigation pursuant to Subpart E above, or on the basis of a determination of a court of competent jurisdiction, or otherwise, that an employer has violated the provisions of section 6(d)(2)(A) of the 1989 Amendments, the Administrator shall issue an order proposing to disqualify the employer from employment of any employees at the training wage. The employer against whom such order is proposed shall be notified in writing of such determination. Such notice shall be served in person or by certified mail.

§ 517.502 Contents of notice.

(a) The notice required by § 517.501 of this subpart shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor;

(2) Except as provided in paragraph (d) of this section, set forth the right to request a hearing on such determination and inform any affected person or persons that in the absence of a timely request for a hearing postmarked or received within 30 days of the date of the notice, the determination of the Administrator shall become final and unappealable; and

(3) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 517.503 of this subpart.

(b) If the Administrator's order is based on a final determination of a court of competent jurisdiction that the employer has displaced an employee in violation of this subpart, the notice shall state that the Administrator's order of disqualification shall be final and is not appealable.

§ 517.503 Request for hearing.

(a) Any person desiring to request an administrative hearing on an order of disqualification pursuant to this subpart shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, postmarked or received no later than thirty (30) days after the date of the notice referred to in § 517.501 of this subpart.

(b) No particular form is prescribed for any request for hearing permitted by this subpart. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(5) Be signed by the person making the request or by an authorized representative of such person; and

(6) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) No hearing shall be afforded to an employer when the Administrator's order is based on a final determination of a court of competent jurisdiction.

Rules of Practice

§ 517.504 General.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence or other rules of evidence shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The Administrative Law Judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ 517.505 Service and computation of time.

(a) Service of documents under this subpart shall be made by personal service to the individual, an officer of a corporation, or attorney of record or by mailing the determination to the last known address of the individual, officer, or attorney. If done by certified mail, service is complete upon mailing. If done by regular mail or in person, service is complete upon receipt by the addressee or the addressee's agent.

(b) Two (2) copies of all pleadings and other documents required for any administrative proceeding provided by this subpart shall be served on the attorneys for the Department of Labor. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, and one copy on the Attorney representing the Department in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ 517.506 Commencement of proceeding.

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with § 517.503 of this subpart.

Referral for Hearing

§ 517.507 Referral to Administrative Law Judge.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 517.503 of this subpart, the Administrator, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, shall, by Order of Reference, refer a copy of the notice of administrative determination, and a duplicate copy of the request for hearing, to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under this subpart and 29 CFR part 18.

(b) A copy of the Order of Reference, together with a copy of this part, shall be served by counsel for the Administrator upon the person requesting the hearing, in the manner provided in § 517.505 of this subpart.

§ 517.508 Appointment of Administrative Law Judge and notification of prehearing conference and hearing date.

Upon receipt from the Administrator of an Order of Reference, notice to the parties, attachments and certificate of service, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall notify all interested parties of the time and place of a prehearing conference and of the hearing, which shall be held immediately upon the completion of prehearing conference. The date of the prehearing conference and hearing shall be not less than 60 days and not more than 120 days from the date on which the certificate of service indicates the Order of Reference was mailed.

§ 517.509 Decision and Order of Administrative Law Judge.

(a) The Administrative Law Judge shall render, within 120 days after receipt of the transcript of the hearing, a decision on the issues referred by the Administrator.

(b) The decision of the Administrative Law Judge shall be limited to a determination whether the respondent has violated section 6(d)(2)(A) of the 1989 Amendments. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator. If the Administrative Law Judge finds that the Administrator has established by a preponderance of the evidence that the employer has violated the provisions of section 6(d)(2)(A) of the 1989 Amendments, as set forth in § 517.402 of this part, the Administrative Law Judge shall issue an order disqualifying the respondent from employment of any employee at the training wage, effective the date of the employer's violation.

(d) The Administrative Law Judge shall serve copies of the decision on each of the parties.

(e) If any party desires review of the decision of the Administrative Law Judge, a petition for review shall be filed in accordance with § 517.511 of this subpart.

(f) The decision of the Administrative Law Judge shall constitute the final order of the Secretary unless the Secretary, pursuant to § 517.512 of this subpart, issues a notice of intent to review the decision.

§ 517.510 Non-Applicability of the Equal Access to Justice Act.

Proceedings under this part are not subject to the provisions of the Equal Access Justice Act, as amended, 5 U.S.C. 504. In any hearing conducted pursuant to the provisions of this Part, Administrative Law Judges shall have no power or authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

Appeals to the Secretary

§ 517.511 Procedures for initiating and undertaking review.

Any party desiring review of the decision of the Administrative Law Judge may petition the Secretary to review the decision. To be effective, such petition must be received by the Secretary within 45 days of the date of the decision of the Administrative Law Judge. Copies of the petition shall be served on all parties and on the Chief Administrative Law Judge. If no timely petition for review has been filed, or where a timely petition has been filed and the Secretary does not issue a notice accepting such a petition for review within 30 days after receipt, the decision of the Administrative Law Judge shall be deemed the final agency action.

§ 517.512 Notice of the Secretary to review decision.

Whenever the Secretary determines to review the decision and order of an Administrative Law Judge, the Secretary shall notify each party of the issue or issues raised; the form in which submission shall be made (i.e., briefs, oral argument, etc.); and the time within which such presentation shall be submitted.

§ 517.513 Final decision of the Secretary.

The Secretary's final decision shall be issued within 120 days of the notice of intent to review the decision and order of the Administrative Law Judge and shall be served upon all parties and the Administrative Law Judge, in person or by certified mail.

§ 517.514 Filing and service.

(a) *Filing.* All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210.

(b) *Number of copies.* An original and two copies of all documents shall be filed.

(c) *Computation of time for delivery by mail.* Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, must be received by the Secretary either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time thereafter was made by mail.

(d) *Manner and proof of service.* A copy of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail or telefax. Service by mail is deemed effected at the time of mailing to the last known address. Service by telefax is effected when the telefax is received.

§ 517.515 Responsibility of the Office of Administrative Law Judges.

Upon receipt of a petition seeking review of the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall, within fifteen (15) days, forward a copy of the complete hearing record to the Secretary.

Record

§ 517.516 Retention of official record.

The official record of every completed administrative hearing provided by this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

§ 517.517 Certification of official record.

Upon receipt of a complaint seeking review by a United States District Court of a Decision and Order issued under this part, the Chief Administrative Law Judge shall promptly certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

Appendix A—Notice to Employees About the Training Wage

The 1989 Amendments to the Fair Labor Standards Act (FLSA) include a provision permitting covered employers to pay eligible workers at a training wage under certain specified conditions. The law requires that you be furnished with a copy of this written notice.

1. The FLSA generally requires that employees receive at least the minimum wage of $3.80 per hour beginning April 1, 1990, and $4.25 per hour beginning April 1, 1991. (Special rates apply to some industries in Puerto Rico and American Samoa.) Unless an exemption in the law applies to you, you are also entitled to one and one-half times your regular rate of pay for hours worked over 40 in a workweek.

2. If you are under the age of 20, your employer may be eligible to employ you for up to 90 days at a training wage of 85 percent of the FLSA's minimum wage or $3.35 per hour, whichever, is greater, under the following conditions:

(a) You are provided this notice.

(b) No other employee has been laid off from the position or a substantially equivalent position.

(c) No other employee has been terminated, or had his or her hours of work or wages, benefits or employment conditions reduced or changed for the purpose of hiring you or any other individual at the training wage.

(d) You are not a migrant or seasonal agricultural worker or a nonimmigrant agricultural worker admitted to the United States under the H–2A program.

(e) You have not previously been employed at the training wage for 90 days.

(f) You have furnished your employer with proof of your age and a signed statement (or documentation) about the starting and ending dates of your previous employment since January 1, 1990, and the hourly wage(s) you earned or, if none, a signed written statement to that effect.

(g) Your hours of work and the type of work you do are permitted under Federal, State, and local child labor laws.

(h) The total number of hours worked by all employees paid at the training wage in any month does not exceed 25 percent of the total number of hours worked by all employees in the establishment.

3. If you are under the age of 20 and you have been employed for 90 calendar days at the training wage, you may be employed at the training wage for up to an additional 90 calendar days provided all of the conditions above are met and, in addition:

(a) Your employer is *not* an employer who employed you during any portion of the initial 90-day period.

(b) Your employer provides on-the-job training in accordance with regulations issued by the Department of Labor.

(c) Your employer provides you with a copy of the training program, and retains a file copy of the training program.

(d) Your employer posts in the establishment a notice of the types of jobs (including yours) for which on-the-job training is being provided and sends the Department of Labor a copy of the notice annually.

4. Unless your employer follows the above rules, you must be paid the full minimum wage.

5. Violations of the training wage provisions by employers can result in the following:

(a) Any employee (or the Department of Labor on his or her behalf) who is terminated, laid off, or has hours, wages, benefits or conditions of employment reduced or changed for purposes of employing an individual at the training wage can file a lawsuit for wages lost and an equal amount as liquidated damages, or equitable relief, including employment, reinstatement or promotion. In addition, the Department of Labor can issue an order disqualifying an employer fom employing anyone at the training wage.

(b) Any employee (or the Department of Labor on his or her behalf) who has not received proper minimum or overtime wages (including proper training wages) can file a lawsuit to recover the amount of such wages plus an equal amount as liquidated damages.

(c) The Department of Labor can seek an injunction to restrain violations by employers, including an injunction requiring the payment of proper wages under the FLSA.

(d) Child labor violations and willful or repeated minimum wage or overtime pay violations by employers can result in the Department of Labor assessing a civil money penalty of up to $1,000 per violation.

(e) In the case of criminal violations by employers, the FLSA provides for penalties of up to $10,000, and, in the case of a second conviction, imprisonment of up to six months, or both.

[FR Doc. 90-4832 Filed 2-28-90; 8:45 am]

BILLING CODE 4510-27-M

federal register

Thursday
March 1, 1990

Part VII

Environmental Protection Agency

Toxic and Hazardous Substances; Certain Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[PP 9G3765/T590; FRL 3685-5]

Myclobutanil; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the fungicide myclobutanil in or on the raw agricultural commodity cucurbit crop group at 0.5 part per million (ppm).

DATES: This temporary tolerance expires January 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-1900.

SUPPLEMENTARY INFORMATION: Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, has requested in pesticide petition (PP) 9G3765, the establishment of a temporary tolerance for residues of the fungicide myclobutanil (α-butyl-α-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile) [free and bound] in or on the raw agricultural commodity cucurbit crop group at 0.5 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 707-EUP-122, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rohm and Haas Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires January 1992. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: February 14, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-4687 Filed 2-28-90; 8:45 am]

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federal register

Thursday
March 1, 1990

Part VIII

The President

Proclamation 6102—National Quarter Horse Week, 1990

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Federal Register

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FEDERAL REGISTER PAGES AND DATES, MARCH

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List February 22, 1990

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 1990

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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March 2	March 19	April 2	April 16	May 1	May 31
March 5	March 20	April 4	April 19	May 4	June 4
March 6	March 21	April 5	April 20	May 7	June 4
March 7	March 22	April 6	April 23	May 7	June 5
March 8	March 23	April 9	April 23	May 7	June 6
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March 21	April 5	April 20	May 7	May 21	June 19
March 22	April 6	April 23	May 7	May 21	June 20
March 23	April 9	April 23	May 7	May 22	June 21
March 26	April 10	April 25	May 10	May 25	June 25
March 27	April 11	April 26	May 11	May 29	June 25
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